

16

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

**No. 283.**

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INDIAN TERRITORY ILLUMINATING OIL COMPANY,  
PLAINTIFF IN ERROR,

vs.

THE STATE OF OKLAHOMA.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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FILED NOVEMBER 13, 1914.

**(24,438)**

(24,438)

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*Return of Writ.*

UNITED STATES OF AMERICA,

*Supreme Court of Oklahoma, ss:*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Oklahoma, in the City of Oklahoma City, this 2d day of November, 1914.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,

*Clerk Supreme Court of Oklahoma,*

By JESSIE PARDOE, *Deputy.*

Costs in Supreme Court of Oklahoma.....	\$69.75
Cost of transcript, etc., on appeal.....	69.00

\$138.75

All costs in Supreme Court paid by Plff. Ind. Ty. Ill. Oil Co.

Filed Oct. 13, 1914. W. H. L. Campbell, Clerk.

*Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of Oklahoma,  
Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Oklahoma, in the case of in re Indian Territory Illuminating Oil Company to show cause, if any there be, why the judgment rendered against the said Indian Territory Illuminating Oil Company, Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Oklahoma, this 12th day of October, 1914.

M. J. KANE,

*Chief Justice Supreme Court of Oklahoma.*

[Seal Supreme Court, State of Oklahoma.]

Attest:

W. H. L. CAMPBELL,

*Clerk Supreme Court of Oklahoma,*

By JESSIE PARDOE, *Deputy.*

INDIAN TERRITORY ILLUMINATING OIL COMPANY VS.

OKLAHOMA CITY, OKLAHOMA, October Twelfth, 1914.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CHAS. WEST,  
*Attorney General of the State of Oklahoma.*

3 Filed Oct. 13, 1914. W. H. L. Campbell, Clerk.

Supreme Court of State of Oklahoma.

# 3240.

In the Matter of the Assessment of Indian Territory Illuminating Oil Company,

*Petition for Writ of Error.*

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the defendant hereby prays a Writ of Error, from the said decision and judgment, to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

Assignment of errors herewith.

JOHN H. BRENNAN,  
*Attorney for Defendant,*  
*Bartlesville, Okla.*

STATE OF OKLAHOMA,  
*Supreme Court, ss:*

Let the Writ of Error issue upon the execution of a bond by Indian Territory Illuminating Oil Company to the State of Oklahoma, in the sum of 25,000.00 Dollars; such bond when approved to act as a supersedeas.

Dated October 12th, 1914.

M. J. KANE,  
*Chief Justice Supreme Court of Oklahoma.*

[Seal Supreme Court, State of Oklahoma.]

Attest:

W. H. L. CAMPBELL, *Clerk,*  
By JESSIE PARDOE, *Deputy.*

4 Filed Oct. 13, 1914. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

# 3240.

In the Matter of the Assessment of Indian Territory Illuminating Oil Company.

Appeal from Decision of State Board of Equalization.

*Assignment of Errors and Prayer for Reversal.*

Now comes the above named Indian Territory Illuminating Oil Company and files herewith its petition for Writ of Error and says there are errors in the record and proceedings of the above entitled case, and for the purpose of having the same reviewed in the United State Supreme Court, makes the following assignment:

In the above entitled cause the Supreme Court of Oklahoma filed two opinions. The first one was handed down and dated March 10, 1914. A motion for a rehearing was made in said cause,

5 and the second opinion was filed by said court June 9, 1914.

In and by the second opinion of said court the first opinion thereof was modified.

That before the State Board of Equalization of the State of Oklahoma, in the first instance, the said Indian Territory Illuminating Oil Company objected to the taxation of its license, lease, business or privilege granted to it by the United States Government, separate from the taxation of its physical property.

That in the notice of appeal to the Supreme Court of the State of Oklahoma, said Indian Territory Illuminating Oil Company further protested, and as grounds for said appeal, alleged:

"That said arbitrary, unjust and erroneous action of said Board, in so assessing the valuation of said Company's property for the purpose of taxation in the State of Oklahoma will, if allowed to stand, greatly and unfairly increase the burden of taxation resting upon said Company, and will deprive it of its property without due process of law, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States, and Section 7 of Article 2 of the Constitution of the State of Oklahoma, and will deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States."

That as further grounds of said appeal said Indian Territory Illuminating Oil Company set forth specifically the nature of its said lease and its said business in the Osage Reservation, and asserted that any attempt to tax said Company's franchise or right to do business and operate under said lease was an attempt to tax a right granted by the Federal Government and is illegal and void, and, further, that any attempt to tax this Company's operations in

6 the Indian Reservation was an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe, contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States.

That in the petition for appeal to the Supreme Court of Oklahoma it was again specifically alleged and set forth that the action of the State Board of Equalization of the State of Oklahoma was illegal and void as depriving the Company of its property without due process of law, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States and would deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States and result in imposing an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States.

That after the second opinion was handed down by the Supreme Court of the State of Oklahoma the Indian Territory Illuminating Company filed its petition for a rehearing, modification of said opinion and a reversal thereof on the grounds which were created by and apparent on the face of said second opinion, wherein and whereby the said Supreme Court of the State of Oklahoma, in said opinion, denied the said Company the equal protection of the laws afforded to it by Section 1 of Article 14 of the Constitution of the United States.

7 First. The Supreme Court of the State of Oklahoma erred in holding and deciding in its first opinion that a statute of the state which authorizes and directs the levy of an ad valorem tax upon an oil and gas mining lease from the Osage Tribe of Indians, approved by the Secretary of the Interior and extended by an act of Congress upon lands of such tribe of Indians is not void upon the grounds that the lessee or his grantee is a federal agent or upon the ground that such tax is a direct burden upon or interference with the power of Congress to regulate commerce with the Indian Tribes.

Second. The Supreme Court of the State of Oklahoma erred in holding and deciding that the Indian Territory Illuminating Oil Company was not a federal agency as follows in its opinion:

"Primarily this Company is not a federal agency. It is a corporation for profit, incorporated under the laws of the State of New Jersey, and doing business in the State of Oklahoma, with whom the Federal Government finds it convenient or profitable to deal in carrying out its policy toward the Osage Tribe of Indians. What the state is attempting to do is to tax property of this corporation within its borders. This certainly is a proper exercise of the taxing power of the state. Borrowing the language of Mr. Justice Holmes, in *Baltimore Shipbuilding Company vs. Baltimore*, 195 U. S. 375, 'it seems to us extravagant to say that an independent private corporation for gain, created by a state, is exempt from state taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time.'"



Third. The Supreme Court of the State of Oklahoma erred in holding and deciding that the action of the State Board of Assessors in assessing the lease, rights and privileges granted to the Indian Territory Illuminating Oil Company by the Osage Tribe of Indians, and renewed by Act of Congress, was not in violation of Section 1 of Article 14 of the Constitution of the United States

8 as depriving it of its property without due process of law.

Fourth. The Supreme Court of the State of Oklahoma erred in holding and deciding that the said action of the State Board of Equalization of the State of Oklahoma did not deprive the Indian Territory Illuminating Oil Company of the equal protection of the law, contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States.

Fifth. The Supreme Court of Oklahoma erred in holding and deciding that the action of the State Board of Assessors in so assessing the said privileges, business and license of the Indian Territory Illuminating Oil Company did not impose an illegal burden upon said Company, and upon commerce with an Indian Tribe contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States.

Sixth. The Supreme Court of the State of Oklahoma erred in holding and deciding that the Indian Territory Illuminating Oil Company was lawfully taxed by the State Board of Equalization, notwithstanding a similar tax could be imposed upon all other like companies in Oklahoma, nor individuals or upon their oil and gas lease holdings, and thereby, in the opinion itself, separate from any other consideration, depriving the Indian Territory Illuminating Oil Company of the equal protection of the law contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States.

9 Seventh. That if, in any view of the opinion of the court, the said court upheld said assessment of the State Board of Equalization as being an assessment against the Capital Stock of said Indian Territory Illuminating Oil Company, then, and in that case, the said court erred in so holding and deciding, because there was no proof that said Company had any stock assessable, and Capital Stock is not assessable to other companies under the laws of the said State of Oklahoma, and that thereby the said State of Oklahoma denies to the Indian Territory Illuminating Oil Company the equal protection of the laws contrary to the provisions of Section 1 of Article 14 of the Constitution of the United States, and that in any event said decision of said court is error because said Capital Stock embraces the value of the very lease held not to be taxable by the Supreme Court in said decision.

Eighth. The Supreme Court of the State of Oklahoma erred in denying the motion of said Company for a re-hearing and modification of the court's opinion of June 9, 1914, wherein and whereby the attention of said court was called to the fact, as a basis for the petition, that the said decision of said court in effect compelled this company to pay on the valuation of its oil leases while the other oil companies and individuals in particular were exempted there-

from, contrary to Section 1 of Article 14 of the Constitution of the United States, and thus, by the effect of said opinion, denied said Indian Territory Illuminating Oil Company the equal protection of the laws in the State of Oklahoma.

For which errors the defendant Indian Territory Illuminating Oil Company prays the said judgment of the Supreme Court of the State of Oklahoma, dated the June 9, 1914, be reversed, and a judgment rendered in favor of said Indian Territory Illuminating Oil Company, and for costs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY.

By JOHN H. BRENNAN,

*Attorney for Indian Territory  
Illuminating Oil Company.*

11 Filed Oct. 13, 1914. W. H. L. Campbell, Clerk.

*Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Oklahoma.  
Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the cause of In re Assessment of Indian Territory Illuminating Oil Company, a corporation, wherein was drawn in question the validity of a statute and an authority exercised under said state, on the ground of their being repugnant to the Constitution, treaties and laws of the United States, and the decision was in favor of their validity, and wherein was drawn in question the construction of certain sections of the Constitution of the United States, a statute thereof, and a commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up and claimed under said sections of the Constitution of the United States, and statute and commission thereof; a manifest error hath happened, to the great damage of the said Indian Territory Illuminating Oil Company, as by its complaint appears. We being willing that error, if

12 any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be

done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 12th day of October, in the year of our Lord one thousand nine hundred and fourteen.

ARNOLD C. DOLDE,  
*Clerk Circuit Court of United  
States, District of Oklahoma.*

[Seal of the United States District Court, Western District of Oklahoma.]

Allowed: October 12, 1914.

M. J. KANE,  
*Chief Justice Supreme  
Court of Oklahoma.*

13 Filed Oct. 20, 1914. W. H. L. Campbell, Clerk.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company.

*Bond.*

Know all men by these presents: That we, Indian Territory Illuminating Oil Company, as Principal, and Southwestern Surety Insurance Company, of Denison, Oklahoma, as Surety, are held and firmly bound unto the State of Oklahoma in the sum of Twenty-five thousand dollars (\$25,000.00) to be paid to said State of Oklahoma, to which payment, well and truly to be made, we bind ourselves jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 16th day of October, 1914.

Whereas, The above named Plaintiff in Error has appealed to the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Oklahoma.

Now, therefore, the condition of the obligation is such, that if the above named Plaintiff in Error shall prosecute its said Writ of Error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

INDIAN TERRITORY ILLUMINATING COMPANY.

By H. V. FOSTER, *Its President.*

[SEAL.]

Attest:

THOS. F. GERMAN,

*A Secretary.*

[SEAL.]

SOUTHWESTERN SURETY INSURANCE COMPANY.

By M. L. BRAGDON, *Attorney in Fact.*

Bond approved and to operate as supersedeas. Dated October 18, 1914.

M. J. KANE,  
*Chief Justice Supreme Court of Oklahoma.*

14 (Filed Oct. 31, 1911. W. H. L. Campbell, Clerk.)

In the Supreme Court of the State of Oklahoma.

3240.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company.

*Petition and Record of the Indian Territory Illuminating Oil Co.  
on Appeal.*

John H. Brennan, Bartlesville, Okla.; Harris & Nowlin, Kenneth C. Crain, Oklahoma City, Okla., Attorneys for Petitioner.

15 (Filed Oct. 31, 1911. W. H. L. Campbell, Clerk.)

In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the Assessment of The Indian Territory Illuminating Oil Company.

*Petition.*

Now comes the Indian Territory Illuminating Oil Company, and for its petition to this Honorable Court in the matter of its appeal from the assessment and valuation of its taxable property for the fiscal year ending June 30, 1912, by the State Board of Equalization of Oklahoma, alleges and says:

I. That petitioner is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, duly authorized to do business in the State of Oklahoma, and having its principal office and all of its business and property in the State of Oklahoma.

II. That heretofore, to-wit, on the 22d day of March, 1911, your petitioner duly filed with the State Auditor of the State of Oklahoma, as provided by law, a return and schedule of the amount and value of its property in the State of Oklahoma subject to taxation, for the information of the State Board of Equalization in making its assessment of the property of your petitioner, as provided by law; a copy of said return being included in the record herewith.

16 III. That thereafter, to-wit, on the 30th day of August, 1911, the State Board of Equalization, being regularly in session for the purpose of making assessment of the valuation of the taxable property of public service corporations, according

to law, did arbitrarily and recklessly, and without any evidence to support its action in that regard, and in direct conflict with all the evidence submitted before said Board, and in conflict with and disregard of the showing made of the value of petitioner's property in said schedule and return thereof, increase and fix the valuation of your petitioner's property for the purpose of taxation from the amount sworn to in said return, to-wit, \$53,835.10, the same being the actual fair cash value of said property, to \$538,350.00; said valuation being therefore \$484,514.90, or nine hundred per cent, in excess of the fair cash value of said property; that thereafter, and on the 2d day of October, 1911, your petitioner, by its attorneys, appeared before said Board for the purpose of obtaining a modification of said assessment, or a dismissal thereof, for the reason that your petitioner claimed, and still claims, that it is not a public service corporation and is therefore not subject to assessment by said Board; but that said Board failed, neglected and refused, and still fails, neglects and refuses, to modify, reduce or correct said erroneous unfair, unreasonable and arbitrary assessment, by reducing the same to the fair cash value thereof, as set forth in said return, or to dismiss the same, or to make any further order or ruling in the premises.

IV. That thereafter, and on the 26th day of October, 1911, said Board being still in session, your petitioner, feeling aggrieved, did file with the Secretary of State of the State of Oklahoma, and with the State Auditor of the State of Oklahoma, Ex Officio Secretary of said Board, notice of its appeal to this Court from the said action of said Board, setting forth in said notices in full the grounds for its appeal, as required by law; a copy of said notice, with acknowledgements of the service thereof duly certified by said officers under their respective seals, being hereto attached as a part of the record herein.

V. That on the same day your petitioner made written demand of the said Board of Equalization, by its said Secretary, for a transcript of the record in the matter of your petitioner's assessment, including a complete record of the returns, evidence, pleadings, exhibits and statements filed, heard, introduced or considered before the said Board or in said Secretary's office relating to your petitioner's assessment, and of all orders, motions, rulings and proceedings of the said Board in connection with said assessment; and that on the 30th day of October, 1911, Hon. Leo Meyer, State Auditor of the State of Oklahoma, and Ex Officio Secretary of the said State Board of Equalization of said State, did make, execute and certify a transcript of all of said proceedings, pleadings, exhibits, statements, reports, returns, and of the oral and written testimony filed, heard, introduced or considered by and before the said Board of Equalization or in the office of the said Auditor of the State of Oklahoma relating to the assessment of your petitioner's property by said Board for the fiscal year ending June 30, 1912; and that said transcript, duly certified by the State Auditor of Oklahoma as aforesaid, with the seal of his office thereto affixed, together with a copy of the notice of appeal served on the Secretary of State of the State of Okla-

homa and on the said State Auditor, as Secretary of said Board of Equalization, as aforesaid, and duly certified and acknowledged by said officials, with their respective seals attached, and a copy of the request for a record made by your petitioner, as aforesaid, with receipt of a copy thereof duly acknowledged by the said Secretary of the Board, is hereto attached, marked Exhibit A, and is here referred to and made a part of this petition, as the record in this cause.

VI. That in the consideration and making of the assessment and valuation of your petitioner's property for the purpose of taxation, and in failing, neglecting and refusing to modify, correct, reduce or dismiss said assessment, the State Board of Equalization committed certain errors to the prejudice of your petitioner, the Indian Territory, Illuminating Oil Company, in the following particulars, to-wit:

First. That said company had before the making of said assessment and valuation, and as required by law, filed in the office of the Auditor of the State of Oklahoma its duly verified return of its taxable property, showing the actual fair and true cash value thereof as \$53,835.10; that said sum represents and did represent the actual fair cash value of the taxable property of said company as of the first day of February, 1911; and that the value of said taxable property has not increased since said date, but has rather decreased; and, further, that on the 18th day of April, 1911, said company, by its manager, appeared before said Board of Equalization and introduced evidence in support of the statements and showing made in said return.

Second. That on the sixteenth day of May, 1911, the said Board did arbitrarily and unjustly, and contrary to the evidence before it and to said verified return, and without any information or evidence justifying such action, assess and fix the valuation of the taxable property of said company at \$1,130,535; that thereafter, and on various occasions, the said company, by its attorneys, appeared before said Board and protested against and complained of said assessment as being excessive and unreasonable, and introduced evidence in support of said complaints and protests; said appearances being on the 29th day of June, the 10th day of July, the 17th day of July, the 2d day of August, and the 30th day of August, 1911; that on said 30th day of August, 1911, said Board reconsidered said assessment of May 16, 1911, and assessed the property of said company for the purpose of taxation at \$538,350; said assessment being contrary to the return made by said company and to the evidence before said Board, and being \$484,514.90, or nine hundred per cent, in excess of the fair cash value of said property as set forth in the verified return thereof filed in the office of the Auditor of the State of Oklahoma, and placed by him before said Board, to-wit, \$53,835.10; that on the 2d day of October, 1911, said company appeared before said Board, by its attorneys, to protest against and complain of said excessive, unreasonable, arbitrary and erroneous assessment and valuation of its property, but that said Board failed, neglected and refused, and still fails, neglects and

refuses, to change, correct or modify said assessment and valuation, and ignored and disregarded, and continues to ignore and disregard, said return and all of said evidence introduced before it supplementary to and confirmatory of said return.

Third. That said arbitrary, unjust and erroneous action of said Board, in so assessing the valuation of said company's property for the purpose of taxation in the State of Oklahoma, will, if allowed to stand, greatly and unfairly increase the burden of taxation resting upon said company, and will deprive it of its property without due

process of law, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States, and Section 7 of Article II of the Constitution of the State of Oklahoma, and will deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States.

Fourth. Your petitioner further alleges and states that in fixing the assessed valuation of the taxable property of said company, the said Board, as your petitioner is informed and believes, attempted to place a value upon and to tax the franchise, occupation, license, or right of said company to do business; which franchise, license and right the said company possesses and is exercising in the reservation of the Osage Tribe of Indians, the same being Osage County, Oklahoma, under and by virtue of a lease specifically approved by the United States Government, through its Interior Department, as guardian of said Tribe; that said lease with said Tribe was specifically renewed by the United States Government by the Act of March 3, 1905, and was further by said Government recognized in the Osage Allotment Act, being the Act of June 28, 1906; that the territory comprising said Osage Reservation, as aforesaid, is under the exclusive jurisdiction of the United States insofar as the rights of said Osage Tribe are concerned; that the operations of said company in said territory, under said lease contract, so made, approved and recognized, are governed by and carried on under rules and regulations promulgated by the Honorable the Secretary of the Interior, as provided in said lease, and that this company is under the direct control of the Government of the United States, exercised by the officers of the said Department thereof; and that any attempt to assess and tax this company's franchise or right to do business and operate under said lease is an attempt to assess and tax a right and franchise granted by the Federal Government,

and is illegal and void; and, further, that any attempt to tax this company's operations and right to do business with said Osage Tribe of Indians under said lease is an attempt to impose, and will result in imposing, an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe, contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States.

Fifth. That said company, your petitioner, is not engaged in a public service of any kind, and is not in any sense a public service corporation, as shown by the evidence presented to said Board; that said Company is not taxable on the assessment of said Board, and



has no property which is subject to assessment and valuation for taxation by said Board, under the laws of the State of Oklahoma.

Sixth. That while this company's surface gas lines run into and through the towns of Avant and Bigheart, in said Osage Reservation, and while this company supplies gas from its said lines to domestic consumers in said towns, it has no franchise rights or duties whatever as a public service corporation in said towns, or either of them, for any purpose; and said company insists that if its service to the people of said towns be adjudged a public service, and this company a public service corporation as to said towns, that still, in no event should any of this company's property be assessed and taxed as employed in a public service, as to said towns, other than the property actually used in serving the domestic consumers in said towns, as shown in the evidence before said Board, and in said return.

Seventh. That the furnishing of gas by this company to the Ochelata Gas & Water Company and the Bartlesville Gas & Oil Company, as set forth in the evidence before said Board, is not a public service; that the said companies so furnished with gas by this company are themselves public service corporations in the towns of Ochelata and Bartlesville, respectively, by reason of certain franchise rights therein, under which they furnish gas to the domestic consumers in said towns, and are so assessed and taxed, as shown by the records of said Board; and that it is unfair, unjust and illegal to attempt to assess and tax this company as a public service corporation upon the same business.

Eighth. That the said Board had no right or authority to increase the valuation of the taxable property of the said company for the purpose of taxation, above the valuation thereof as set forth in the verified return thereof duly filed in the office of the State Auditor, without evidence justifying such increase; and that its action in so increasing such valuation, and in failing, neglecting and refusing to modify, reduce, correct or dismiss such erroneous valuation, and in ignoring and disregarding the information and evidence before it, was arbitrary, unjust, unreasonable and illegal, and will, if allowed to stand, result in depriving this company of its property without due process of law, and in depriving it of the equal protection of the laws, and will render this company unable to carry out the provisions of, and to carry on and perform the duties imposed upon it by, its said lease and contract with the Osage Tribe of Indians and the United States Government; thereby hindering and obstructing the performance of a contract with the Federal Government, and interfering unduly and illegally with commerce with an Indian Tribe; all contrary to the specific constitutional provisions hereinbefore referred to.

Ninth. That this company is now paying and has heretofore paid all legal taxes upon its business and property in this State, including gross revenue, gross production and ad valorem taxes, and that it has not at any time attempted to avoid the payment of any just or legal tax.

VII. Your petitioner further alleges and states that this appeal is taken, and notice thereof was duly given to the Secretary

of State, as required by law, and to the State Auditor, as Secretary of the State Board of Equalization, within sixty days after the making of said assessment, and prior to the adjournment of said Board, and that all the matters and things herein set forth were duly brought before said Board, as shown by the record hereto attached as Exhibit A, and that all the grounds of appeal herein stated were fully set forth in said notices of appeal.

Wherefore, your said petitioner, the Indian Territory Illuminating Oil Company, respectfully requests an examination of this, its petition, and of the transcript and record certified by the Auditor of the State of Oklahoma, as Secretary of the State Board of Equalization, and of the notice of appeal served on the Secretary of State of the State of Oklahoma and on the said Secretary of the State Board of Equalization, hereto attached, with acknowledgements of service, and requests a hearing on this, its appeal from the action of said Board in making said arbitrary, unjust and illegal assessment and valuation of its taxable property and in failing, neglecting and refusing to reduce, modify, correct or dismiss said assessment, in this Honorable Court, on all of said matters set forth in said record and in this petition; and upon final hearing, that the action of said State Board of Equalization be reversed, and that said Board be decreed and adjudged by this Court to be without jurisdiction to assess the property of your petitioner for taxation, for the reason that it is not a public service corporation; or, if any part of the property of your petitioner be adjudged to be used in a public service,

that said Board be permitted and directed to assess only that part of your petitioner's property so used, in accordance with the return and the evidence set forth in the record herein; or, if said prayers be denied, that said Board of Equalization be directed and required to assess the property of your petitioner at its fair cash value, in accordance with the return thereof and the evidence before said Board as set forth in the record herein; and that upon such hearing your petitioner have such other and further relief as may to the Court seem just and proper.

THE INDIAN TERRITORY ILLU-  
MINATING OIL COMPANY.

By JOHN H. BRENNAN,  
HARRIS & NOWLIN,  
KENNETH C. CRAIN,

*Attorneys.*

## EXHIBIT A—RECORD.

In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Co.

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Filed Oct. 31, 1911. W. H. L. Campbell, Clerk.

26 Be it remembered, that on the 22d day of March, 1911, the Indian Territory Illuminating Oil Company filed in the office of the Auditor of the State of Oklahoma its annual return, with a letter of transmittal; said return and letter being in words and figures as follows, to-wit:

27

*(Letter of Transmittal, with Return.)**(Letter Head.)*

BARTLESVILLE, OKLA., March 2, 1911.

Leo Meyer, State Auditor, Oklahoma City, Oklahoma.

DEAR SIR: Enclosed please find Annual Return of the Indian Territory Illuminating Oil Company, showing the taxable property held by it in Osage and Washington Counties, as a Public Service Corporation.

Regarding the questions relative to surplus, undivided profits, capital invested, etc., which have not been answered for the reason that it would be misleading, inasmuch as this Company is primarily a producing company of Oil and Gas, and is only engaged incidentally as a Public Service Corporation, in the supplying of gas to its sublessees for fuel for the development and operation of its lease held by it on the Osage Reservation, and for domestic service in two or three small towns, and which service is of very small moment, probably not amounting to more than an average of \$200.00 per month for each town, its income, surplus, profits, etc., are almost wholly from its oil business, and inasmuch as the oil business and gas business of this Company has never been separated, it is impossible to answer these questions with any degree of accuracy, for the reason that it was never intended by the management to engage in Public Service business, but to furnish gas in wholesale quantities to Companies that were so engaged. But, inasmuch as it was necessary, to supply our own leases and our sublessees with gas for fuel, to build long lines, we naturally, for the accommodation of those along the lines, have permitted others to connect, but you will readily understand that the service  
28 along 70 miles of mains, over a sparsely settled country like the Osage is not conducive of much profit, as the care and expense of collection more than equals the receipts.

In relation to our Gross Receipts from the sale of gas for the year, I will say that they amounted to \$35,947.91. Against this we have \$14,873.13 as cost of maintenance, and by careful computation we find that the wells in service to operate this gas deteriorated during the year 28%, and that 28% of their original cost, which we consider would be a fair offset against our receipts, amounted to \$6,884.87. In addition to this, we spent over \$15,000.00 in drilling wells to increase our gas production, with the result that all the wells drilled were complete failures. This last item we believe would also be reasonable to charge against our receipts. Our maintenance account does not include any of the office expense, general expense, legal expense, or any other expense incidental to the general business of the Company, which amounts to many thousands of dollars each year, neither have I taken into account any taxes of the Company. You will thus note that our gas business would be operated at a loss were it not for our other in-

terests, and were it not that it was necessary to the operation of oil business it would be poor business policy to continue.

In the matter of names and addresses of our stockholders asked for, will state that we do not keep a record of them in this office. That record is kept by the Corporation Trust Company, 15 Exchange Place, Jersey City, N. J., and we are unable to furnish it except by application to them.

Trusting that this report will be satisfactory, and assuring you of our readiness at any time to give you any additional information, I am

Very respectfully,

INDIAN TERRITORY ILLUMINATING  
OIL CO.,

By CHAS. F. LEACH, *Manager*.

C.F.L./C.W.A.

Enc.

(Here follows annual return blank marked pages 30 and 31.)

\$11898.80

TOTAL SQUARES AND TOWNSHIP

\$11898.80

BLACK DOG TOWNSHIP

2 Mi. 3-in. Line 450 900 13  
 9.86 " 3-in. " 930 9169.80 28  
 11.20 " 2-in. " 450 5040 28

All other property and fittings,

8: Mi. 3-in. line 930 100 28  
 9: " 2-in " 450 7440 29  
 4050 29 \$26699.80

TOWN OF BICHEART.

1 3-in. H.P. Bronze Regulator 45  
 1 3-in. L.P. Fulton Regulator, " 30  
 1 2 H.P. " 25  
 2 L.P. Regulators 30  
 61 Meters 305

5 Mi. 4-7/8 in Pipe (case) 1000 500  
 1.17 " 3 " 930 1088.10  
 1.65 " 2 " 450 742.50  
 .65 " 1 " 200 130  
 Misc. Tools, Fit., Etc., 200

3095.60

1.20" 3 In. Line 930 1116. 43  
 .28" 2 " " 450 126. 43  
 6.70" 2 " " 450 3015 35  
 5.25" 3 " " 930 4882.50 35  
 .08" 4 " " 1580 126.40

1 2-in H.P. Regulator 25.  
 1 2-in L.P. Regulator 15.  
 1 Mfg. Meter 25.

9530.90

TOTAL BLACK DOG TOWNSHIP

\$39126.30

TOTAL OSAGE COUNTY,

\$51025.10

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2.

## ANNUAL RETURN

Of the ..... to the State Auditor of Oklahoma, showing the amount, kind, location and value of all property belonging to, controlled by, or in process of construction for said person, firm, company or corporation in the State of Oklahoma, on the first day of February, A. D. 19....., as required by the State Board of Equalization, and in accordance with Chapter 38, Session Laws of Oklahoma, 1909.

NOTE.—Footings of columns (Totals 1 and 2) must balance.

State of Oklahoma, WASHINGTON		County, February 1st, 1911		VALUATION OF the property of the COMPANY as fixed by the State Board of Equalization for the year A. D. 19	
PIECES OR QUANTITY	DESCRIPTION	PRICE EACH	(1) TOTAL	SCHOOL DIST.	(2) TOTAL
1.40	Lincoln Township. Mi. 2 in. pipe,	450	630	11	\$ 630.00
.28	Madison Township. " 2 in. pipe Chapman and Fulton High	450	126.00	15	

-CERTIFICATE

OF

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1. <sup>28</sup>	" 2 in. pipe Chapman and Fulton High Pressure Regulator, Miscellaneous Gates and Fittings	450	126.00	15	
1		30.	30.	16	
			24.	16	
	TOTAL MADISON TOWNSHIP				180.00
	JACKSON TOWNSHIP				
1	50,000 Ft. Proportional Meter,		100.	10	
1	Volume Attachment and Recording Guage		75.	10	
	Miscellaneous Fittings and etc.		25.00	10	
	TOTAL JACKSON TOWNSHIP				200.
	DEWEY TOWNSHIP				
4	Mi. 2 inch Pipe	450.00	1800	6	1800
	TOTAL-WASHINGTON COUNTY				\$2810.00

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32 That thereafter, and on the 18th day of April, 1911, the State Board of Equalization of the State of Oklahoma met at Oklahoma City, Oklahoma, with Charles A. Taylor acting as Chairman, and G. T. Bryan and Leo Meyer present, and that Mr. C. F. Leach appeared before said Board on behalf of the Indian Territory Illuminating Oil Company and made a statement; said statement, and a verbatim report of the examination of the said C. F. Leach by the Board at the time, being as follows, to-wit:

33 *Meeting at Oklahoma City, April 18, 1911.*

Present: Charles A. Taylor, acting as Chairman; G. T. Bryan, Leo Meyer.

Mr. C. F. Leach of the Indian Territory Illuminating Oil Co., appeared before the Board and made the following statement:

I do not know that we will have any troubles; however, I thought it well while the Board was in session to make a statement. Now, the Indian Territory Illuminating Oil Co., as you are probably aware, is the original lessee of the Osage Reservation, and they have subleased to a number of sublessees and have practically reserved to themselves the gas. Early in the development, before Statehood, they laid various lines over the reservation for their own service and for the service of the various sublessees for the purpose of developing for oil and gas. These lines are two and three inch, laid on the surface of the lands, and with very few exceptions they are buried, except in going across a piece of land desirable for cultivation and are but temporary lines. By that I mean that perhaps in one locality there will be development and lines will be laid to accommodate that development. Probably in a few months, possibly in a year, it will be necessary to take those lines up and move them somewhere else. Now, since we have made this report, on the first of March, we have taken up four miles that is returned to the Board of Equalization in our report. Some of this has been laid elsewhere and some held up waiting for a call to be laid at some other point. In making that return, I have based my figures upon what second hand pipe would cost, and allowing what I think would be fair for the laying of that character of lines. Heretofore we have returned on the same basis and the Board of Equalization has seen fit to consider that we have a franchise right in addition to the cost. This, we think, under the conditions, is an erroneous opinion, for the reason, as I say, it is not like as if you were laying a permanent line that would be there for a number of years and in which you were engaged in carrying on a public service business.

This is not, we do not think, a public service, in the first place for the reason that we are the producers of this gas. That under our contract, which I will leave a copy with you for your consideration, with the Osage Tribe of Indians, (Copy attached) and we are granted the right to lay these lines for the purpose of carrying on the development of oil and gas and also for the purpose of marketing this gas. Now, these lines are all within the Territory covered by this

lease except the four miles I spoke of as being taken up. In addition, however, to the service to our sublessees and to ourselves, there are, of course, a number of what you might call domestic consumers along these lines. They are receiving service from us, but we have something like 70 or 75 miles of lines and a comparatively few consumers along these lines, and you will note that from an industrial standpoint, if we were to try to collect from these, the amounts received would not pay for the cost of collecting.

We are also supplying gas to the town of Big Heart and that particular part would reasonably be called public service, because it is. However, we were engaged in that prior to statehood under our laws, but that is but a very small per cent. I will further add that our gas business is not a remunerative business. Now then, of course, the question would naturally arise as to why we are engaged in it if that is true. I will explain that by saying that we have a

34 greater interest in developing the property than we have in the profits derived from the gas, because our profits come from the production of the oil, because the more barrels of oil produced, the more is our royalty in them. We have, I will state, in all these subleases an equity interest, or you might state a brokerage interest in all the oil produced, so that is where we get our profit. In making my report for the Corporation Commission last year, you will find in that report these figures:

Gas wells and maintenance.....	\$7,926.00
New wells.....	6,605.00
Expenses of changing of lines.....	5,703.00
Meters .....	247.00
Tools and instruments.....	333.00
Estimate general taxes.....	1,500.00

We were assessed \$70,000.00 so I think I am away under. Our gross revenue tax was \$295.00. I estimated 25% of the general office salaries and expenses, \$2,300.00; 25% of clerk hire, \$250.00; horse care, wagon and hire, \$868.00, making a total of \$30,440.00. There was received from gas during the same period, \$28,415.00, so you can see there was a shortage. Now, as I stated before, in the first place, we hardly think we should be considered a public service corporation. In the second place, on account of the character of our lines, we feel that we should not be charged any more or assessed any more than our lines are actually worth. That there is no franchise value such as would be in a regular public service corporation where they have their lines permanently laid and are making a business of the sale of gas to provide consumers. And third, that in view of the fact that we are only marketing this to our nearest market, that additional values should not be placed upon it. It is necessary, in marketing gas, to convey it a certain distance, be that ten feet, one hundred feet or three hundred feet; if there was a pipe line we were delivering it to, we would have to pipe it a certain distance from the well. If we conveyed it 100 feet to a pipe line, we might be classed as a public service corporation. It does

not seem to me it makes any difference whether 100 feet or a mile. I think that is about our position.

By Meyer:

Q. From this statement, you have not made any improvements at all, have you, comparatively speaking, with last year?

A. You see, our improvements are taking up and moving some place else. Let me illustrate. It is just moving around from one place to another.

Q. Your company is incorporated with \$3,500,000.00 under the laws of New Jersey; is that all paid in?

A. I cannot say. I will be frank with you. I do not know. I have just been with the company a year. All of that was done years ago, and consequently I do not know.

Q. Is it not a fact that your company is in the field more for the purpose of handling lease property in Oklahoma than for actual profit?

A. No.

Q. You simply sublease?

A. Let me explain; there is a misconception as to what the Indian Territory Illuminating Oil Co. is at this time, in relation to handling of leases. A lease was originally granted, covering the entire Osage Reservation, about 1,500,000 acres, and as you will notice, by the lease, there was a provision for renewal under certain conditions. This lease was renewed in 1905 for an additional period of ten years, to the extent of 680,000 acres. This 680,000 acres was to cover just the lands that had been subleased by the Indian Territory Illuminating Oil Co. At the time of that renewal, the Indian Territory Illuminating Oil Co. found itself with 2,000,000 acres upon which they had actual operating wells. Now all the territory that the Illuminating Oil Co. now owns they have purchased, just the same as you would purchase, from a sublessee, and they have no lands for sublease since the renewal of the lease in 1905 except such lands as they have purchased. I will say in relation to that, that they have not to my knowledge issued a sublease since the renewal covering any lands except in two instances which were to perfect title, and with the consent of the Secretary of the Interior, and all papers were returned to the company and they issued a new sublease, simply to perfect title. They had no equity in the property.

Q. When you rendered these figures, did you expect the Board to at least double them?

A. No, I did not.

Q. You would not object to this Board of Equalization putting the figures to where they were last year?

A. No, I think that is unjust. If you will note there, you will see that I have shown you the figures on second-hand pipe. There is a list in which we quote two-inch pipe at 5½ cents to 6¼ cents. In this return, I have allowed 7 cents for that pipe and allowed \$54.00 for the laying of it. In the matter of three-inch pipe, it is quoted from 13½ to 14 cents. You will note that I have returned it

at 16 cents, and allowed \$85.00 for laying it. In the matter of four-inch pipe, that is quoted at 21½ cents to 22 cents, and I have just returned it at 25 cents and then allowed \$250.00 per mile for laying it. The 5½ inch, that is ten-pound casing, that is just exactly what it cost. I returned it at what it cost, and have allowed \$496.40 for laying it. You see I have tried to return this at just what the material was worth. Unless you find that there is a franchise value, I do not think there is any value in the lines over and above at what I have returned it, and unless you find a fictitious value, I do not think there is any grounds for raising it.

36 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Co.

Carl Lumpkin, of lawful age, being first duly sworn, on oath says: That he is one of the official stenographers and reporters of the proceedings of the State Board of Equalization; that in such capacity, he attended the meetings of said Board from time to time, and faithfully and correctly reported said proceedings; that he attended the meeting of said Board held on the 18th day of April, 1911, and that the foregoing pages, headed and referred to as of that day, contain a full, true, correct and complete transcript of his shorthand notes of the proceedings on said day relating to the assessment of the Indian Territory Illuminating Oil Company, and a full, true and complete record of all oral and written testimony, and of all exhibits, statements and pleadings introduced thereat on behalf of said Company, and of the rulings and orders of said Board in relation thereto.

CARL LUMPKIN,  
*Official Reporter.*

Subscribed and sworn to before me, this 30th day of October, 1911.

E. F. KEYS, [SEAL.]  
*Notary Public.*

My commission expires January 4, 1913.

37 That, thereafter, and on the 16th day of May, 1911, the State Board of Equalization met at Oklahoma City, Oklahoma; a true copy of the minutes of its proceedings relative to the assessment of the Indian Territory Illuminating Oil Company being as follows, to-wit:

38 OKLAHOMA CITY, OKLAHOMA, May 16, 1911.

\* \* \* \* \*

The Board of Equalization met pursuant to recess taken at 1:30 P. M. with the following members present:  
Governor Lee Cruce, Chairman.  
State Auditor Leo Meyer, Secretary.

State Treasurer Robert Dunlop.  
 Secretary of State Ben F. Harrison.  
 State Examiner and Inspector Charles A. Taylor.  
 President Board of Agriculture G. T. Bryan.  
 Attorney General Charles West.

\* \* \* \* \*

It was moved and duly seconded that the assessed valuation for the purpose of taxation of the property of the Indian Territory Illuminating Oil Company to be fixed at \$1,130,535. Motion carried, all members voting aye.

\* \* \* \* \*

State examiner and Inspector Taylor made inquiry as to the business transacted by this Board during his absence during the morning session and ratified the action of the Board.

It was moved by Harrison, seconded by Dunlop that the State Board of Equalization adjourn subject to the call of a majority of the members of the Board or until such Board meets to equalize the valuation of the property as returned by the county clerks. Motion carried, all members voting aye. The Board thereupon adjourned.

39 That thereafter, and on the 29th day of June, 1911, the State Board of Equalization met at Oklahoma City, Okla., and certain proceedings were had before said Board relating to the Assessment of the Indian Territory Illuminating Oil Company, and certain oral and written evidence introduced; a true transcript of said proceedings, with copies of the exhibits introduced, being as follows, to-wit:

40 OKLAHOMA CITY, OKLA., June 29, 1911.

The State Board of Equalization met at ten o'clock A. M. June 29th, 1911, with the following members present:

Governor Lee Cruce, Chairman.  
 State Auditor Leo Meyer, Secretary.  
 Secretary of State Ben F. Harrison.  
 State Treasurer Robert Dunlop.  
 President Board of Agriculture G. T. Bryan.  
 Attorney General Charles West.

Absent: State Examiner and Inspector on account of illness and out of the City under the direction of a physician.

The following proceedings were had:

Mr. John H. Brennan representing the Indian Territory Oil and Illuminating Company was present and made the following statement:

"Merely for the purpose of having an issue to answer the situation, I would like to ask if it is proper to ask what the grounds were upon which the assessment was raised from \$90,000 to over a million and if there was any evidence on that proposition that we should meet here.



Mr. Harrison: You were before the Board. Didn't you appear before the Board?

A. No, one of our witnesses appeared and made a statement along the lines of the return. All I ask for now is for the purpose of getting an issue and seeing what we have to meet.

Mr. West: The Board considers not only the sworn statements made to it but everything they know or hear of.

A. I merely wanted to know what it was that was introduced in evidence if anything upon which you made the raise.

Mr. West: Any one comes before us we ask him what the cost of pipe lines are, what the business probably pays and what it probably costs, we couldn't give it all to you.

A. Then as I understand it there wasn't any additional evidence introduced in our absence.

Mr. Harrison: Other witnesses that came before us on other matters were asked questions concerning various companies.

Mr. West: I think we asked you about some four or five companies didn't we?

A. Yes sir.

Q. That is the way we do with pretty nearly every one.

A. The raise was so startling we didn't know but what you had something in mind.

Mr. West: The explanation of that is, we are taking the business as a business; we are not assessing the pipe in the ground.

A. Even as a business I didn't know but what there was some evidence introduced you know. I would like to call the Chairman's attention to our return in one particular if you have the return here. Mr. Chairman the only point is that there are two questions in the printed form; total operating expenses for the year ending June 30, 19— and total expenses for repairs ending June 30, 19—; total expenses for improvements. That was answered more fully than might be answered here. More fully and thoroughly by an attachment as an exhibit to this return and I didn't know but what it might have escaped your attention.

Q. What is the point about it?

41 A. The point is, there were two or three questions that were in such form that they were not answered and if your attention was called to it you might think it was intentional if it was not for the fact that the exhibit next to the report answered it more fully and completely.

Q. What were those questions about?

A. Total improvements, etc.

Q. What is the amount he spent in the maintenance of the property separate from the drilling of the holes?

A. I haven't got that letter before me now.

Q. Can you tell me about what it was, because a difference of several hundred dollars wouldn't make any difference.

A. I can get you a copy of that letter.

Q. How many miles of main line?

A. 65 or 70 I think.

Q. What kind of pipe?

A. Two inch and three inch, I think, most of the surface pipe.

Q. That gas pipe?

A. Yes sir.

Q. Have you any trunk line at all?

A. No, none at all. We are not in the gas business. I think there is a mis-understanding as to why these lines were built.

Q. What business are you in?

A. The oil producing business and these gas lines are temporary pipe lines lain on the surface of the ground for the primary purpose of furnishing the producers of oil with fuel.

Q. For drilling?

A. For drilling.

Q. You sell them the gas?

A. Ninety per cent. We sell them the gas; we have an interest in each lease we thus serve and it is for the purpose of promoting our own interests that these lines have been laid; probably different from any other business you could think of.

Q. The probability is you sell your gas for pretty nearly what it cost you?

A. We sell it for less, losing fifty thousand dollars in five years.

Q. Do you sell to anybody you are not interested with?

A. Yes sir, two little towns, Avant and Big Heart.

Q. How much did you make last year on those two towns, gross?

A. I think the gross receipts from those two towns would be \$500.00. Four thousand feet a year. We can give you statements under oath telling it exactly.

Q. How — profit did you make out of that?

A. Just in a minute. I would like to make a record here. Do you want me sworn?

Q. If you want to be.

A. If you please.

(The witness is here sworn.)

If you will let me introduce this map.

(Map showing the lines of the Indian Territory Illuminating Oil Company offered in evidence and made a part of the record in this case and Marked Indian Territory Illuminating Oil Co.'s Exhibit A.)

It shows all our lines absolutely. It will explain the business and how we happened to get into it. This shows the two inch, three inch and four inch line and it is drawn according to the scale and so you have the whole business before you.

Q. We have so much to do and so little time to do it in you will have to call to our attention what is material to the question.

A. The whole map. Now these lines were not put in all at once. They were put in by extending the lines running from the small gas wells to a producer, then extended, then run over, then taken up and moved and put over to another producer's wells and most of these lines, ninety per cent of them can be moved and are moved from time to time and year to year for the purpose of getting this

production. The little towns of Avant and Big Heart, the lines in those productions, there is no part that can be used for a trunk line or large system in introducing gas at a distance to large consumers. We haven't introduced this system from where we get the most oil. We get the most oil from near Osage Junction for the reason that it is a losing system; we got into it by accident and not intentionally. It has been a losing game and I have been against it as far as I am personally concerned all the time. We have lost fifty thousand dollars, except we charged in there one third of the office expenses and if you would strike out that it would show a loss anyway.

Q. What is the actual loss you can allocate to this business?

A. I would say disregarding office expenses, it would show a loss of five and ten thousand dollars. Where we run these surface lines to the producer we charge a flat rate.

Q. But the rest of the business is simply furnishing gas to oil drillers with whom you are interested in the lease?

A. Yes sir. Except we furnish Ochelata; we also furnish about \$200 a month to the Bartlesville Oil and Gas Company. We are also bound under our lease to furnish members of the Osage Tribe free of charge. Then there are some farmers along the line——

Q. What do the farmers' business amount to?

A. It amounts to——

Q. Gross.

A. The total collections are \$190.00 a month but \$96.50 is supplied by the oil companies, therefore, outside of the oil companies and the amount on the lease there would be \$94.00 a month from the domestic consumers along that line. About a year ago we attempted to get into a larger gas business and we have drilled a series of ten or twelve dry holes all over this up here and the gas business, such as you anticipate we might be in now we are not in that business yet, although we have a good deal of eight inch pipe ordered, and of course when we do get into it we will file a map showing just where we proceed when we start in. Now the company is not in the leasing business now. Say prior to Dec. 1st, 1904, its property has all been sub-leased. It only has 2,000 acres, largely given to it and 20,000 it bought. It has a royalty from the rest of the stuff of 1/24 net.

Q. That is the oil business?

A. That is the oil business and that of course is 95 per cent of the business.

Q. You intend to go into the gas business?

A. If we get the gas, but we have failed in the last year.

Q. What are your rights worth?

A. The gas in the ground?

Q. Yes sir?

A. I haven't any idea. We thought they were considerable in 1909.

Q. Have you any one present who knows more about that than you do?

A. No.

Q. Then you can't give the Board any information at all?

A. Except we drilled nine or ten holes in succession last year, getting one small gas well. A. That has just been put in, and we may not put it in.

Q. You intend to go into the business of selling gas?

A. We did intend to but we haven't got the gas, we failed to find it. A short time ago I was down here with reference to another company and the Governor suggested to me that things might change between then and now and that is the change; it has grown a great deal worse and come to a complete standstill with reference to both cases.

Mr. Harrison: Do you turn in any valuation for your interest in these oil leases?

A. All we are taxed on; we pay taxes on our gross production; we pay taxes on our gross receipts, on the gas we produce; on the gas going through the line and on the line it goes through. There isn't anything we don't pay a tax on.

Mr. West: What consideration do you get for this service you make to these oil drillers?

A. We charge a flat rate, *arbitrary*; started eight years ago when the gas business was new and we never raised it on them.

Q. That is the business you have made a loss of \$5,000 or \$10,000 on?

A. Yes sir.

Q. What other consideration do you get, why do you keep on doing it?

A. The other consideration—we are interested in all the leased that those lines run to.

Q. Can't you approximate the value of that service to those leased you are interested in?

A. You could as well as I can.

Q. We have done it and you must show us where we are wrong.

A. I claim that at least 85 per cent of the property returned in our sworn statement we are not taxable on, because we are not a public service corporation as to the service to these men who are producing wells on the lease. We are acting under a grant from the

United States government under the act of Congress. We are acting under the rules and regulations of the department.

It may be Avant and Big Heart that we might be considered a public service corporation, but as to this other, I submit we are not a public service corporation and subject to no taxes. Surface pipe lines that run from oil producers' fields are not to drill wells but develop the territory. I submit to this Board that at present it should not be taxed.

Mr. Cruce: Do you think it should be taxed locally?

A. Yes sir. We pay taxes locally and submit our property locally.

Q. Have you rendered that locally?

A. No, because it didn't come up until this meeting before this Board. It didn't come up until I was analyzing the situation with reference to presenting this to you. We put in such property as we

could. This line runs to our own property. There is \$7,000 worth that should not be returned, no matter how you view this.

Q. Does your company own any property outside of Oklahoma?

A. No sir.

Mr. West: You say you furnish gas to the Osage?

A. Yes sir.

Q. What is that worth?

A. It wouldn't be very much that we do serve. I could get a list of the number. Fifteen or twenty families. That is under the original lease; we are bound to do that.

Q. Is that worth more or less than what you serve to the farmers?

A. It was worth less. We don't serve as many people there as we get receipts from.

Q. And the consumption by the free users isn't greater than that by the people that pay?

A. Yes sir.

Mr. Cruce: You say all your property is owned in Oklahoma?

A. Yes sir.

Q. I notice in your sworn statement returned to this Board that you are capitalized at three and one half million dollars, and you state it is all paid up?

A. Yes sir.

Q. What have you done with that three and one half millions?

A. That wasn't paid in. That was given before our time. The company was organized by promoters in New York. I represented the owners. I represented the old owners. I had to get it out of the hands of the promoters; they had against it 3½ million dollars. I got it away from them after litigation and then I paid out the stock to the owners of the property; that was the best I could do under the circumstances.

Q. How much was paid in stock?

A. Nothing paid in.

Q. Nothing paid in on the 3½ million dollars?

A. No, the leases were turned over. I have made a statement at length of our position in this matter before the Board and I have covered that capital stock business. The capital stock far exceeded of course the value of the lease, but it was not our deal and it was not the old owners' deal; that was the reason I happened to become first connected with the property was to get it out of the hands of these people.

Q. How much do you figure your property is worth?

A. As I was going to say, in 1909, the first part of 1910, that field we thought had considerable value, but these dry holes has changed the status of the whole situation. I might best answer you by an incident. I have fifty thousand shares of stock which I tried to sell for fifteen cents for eight months. There is no market for the stock. Those things that there isn't any question about we can all discuss openly. The company has no secrets. I know all about the business of the company. I am a director in the company. If you have any questions to ask I would like to answer them now.

Q. What do you consider your property worth?

A. I gave you an incident; it went to show that was the best way I could explain it. I think it ought to be worth \$500,000.

Mr. West: You mean oil and gas?

A. It expires in a year—in five years. If you gentlemen will understand and go into this in detail and not let me forget incidents of that kind you will see the reason for it. In 1910 and 1909 I bonded it for \$300,000. I couldn't sell a bond because it expired in five years without any right of renewal.

Q. You mean the lease expired?

A. Yes sir.

Q. Who have you got your lease with?

44 A. The United States granted it and our business is mostly with a tribe of Indians on the Indian Reservation.

Mr. Harrison: You haven't got the usual form of lease?

A. No sir. This is a special lease granted by the Act of Congress, March 3, 1905, and that is the reason why I claim the service under that lease under the rules and regulations of the Department of the Interior is not subject to the jurisdiction of this Board. I don't think the Corporation Commission could lay down any rules with regard to the service.

Mr. Cruce: You never sold any bonds?

A. No sir and I tried for quite a little time. There is no question about this because I know what the condition of the property is thoroughly.

Mr. West: What is the business of the Ochelata Gas and Water Company, what ought it to be worth?

A. We haven't got a cent out of that for a year.

Q. Why?

A. Because it is defunct and we would stop if it wasn't for the people in Ochelata. We only get \$1,000 a year proceeds any way.

Q. You mean that thousand amounts to \$100 a month?

A. Yes sir.

Q. It ought to be worth that ought it not?

A. Yes, it ought to be worth that much. You understand this line is so long it requires a good many men on it.

Mr. Cruce: What are your expenses?

A. The gas side of it?

Q. Yes sir.

A. The expenses of the oil would be enormous because we are drilling wells all the time. You take a lease that produces \$150,000 in a certain length of time, \$150,000 on the right side of the ledger and if they drill thirty wells in the Osage that would be \$150,000. The expiration of the lease on that situation is what hurts. Where there is a sub-lease that is very valuable that goes into the market and is sold today; there are some sub-lease companies that are richer than we are. I think there is one section down here that is twice as rich as the Indian Territory Illuminating Oil Company.

Mr. West: Are they furnishing gas to any one?

A. No, but if we furnish it it ought not to be subject to a burden; it ought to be fostered.



Q. You do act in a public capacity towards a business of \$4,000 a year to Avant and Big Heart?

A. We haven't got a franchise. I don't admit it at all. I think we could pull our lines out of there in a minute and the State Corporation Commission couldn't interfere with us.

Q. Suppose then you have a business of a public character towards Avant and Big Heart which you don't agree to, and \$1200 for furnishing gas to some farmers, I don't know whether you agree to that or not, and \$1200 a year to Ochelata; it ought to be worth that much. Have you any other business of that character, that is, like the service you are giving to Avant and Big Heart, the Farmers and Ochelata?

A. No. The Bartlesville, I mentioned that before, the Bartlesville Oil and Gas Company about \$200 a month now. Through this three inch line that runs up here about 25 miles.

Q. How about this Osage, is that worth half as much as you give to the farmers?

A. I suppose it is just about.

Q. On our theory all of these five, the Avant and Big Heart; the farmers, the Bartlesville Oil and Gas, the Ochelata, and the Osage Indians, we believe is a public service business and subject to assessment by us; on that basis it would amount to about a business, in the neighborhood of \$10,000 a year, \$9,400.

A. We are taxed again by the State of Oklahoma under another law.

Q. What ought that business considered in that way be worth?

A. Well, that business isn't worth anything.

Q. You think that is worth nothing?

A. No.

Q. Are you answering my question? Do you mean to say that if you had a public business——

A. You are stating a hypothetical case.

Q. On our theory it is.

A. I haven't any idea what it would be worth.

45 Q. Suppose those five were worth ten thousand, what ought that business to sell for?

A. I haven't the least idea.

Q. Do you want to offer any evidence on that?

A. Not on that hypothetical case, no.

Q. What per cent of your entire business is your gas business?

A. I figured it up, about 1/12 I think counting receipts.

Q. Well I mean the business, of course it is a difficult thing to compare a gas business to an oil business, but suppose you instead of figuring on receipts figured on expenses, of your total expenses, what are your expenses in your judgment on the gas business compared to your oil business?

A. Well I will let Mr. Leach answer that.

Mr. Leach: I can answer exactly what the expenses are on the gas business. I could not answer just exactly the cost on the oil business.

Q. I am trying to get information as to how to compare the gas business with the oil business. Mr. Brennan don't care to offer any evidence as to the value of your gas business, so there are three ways I can get at it. Either the receipts, the expenses or the investment. Do you know any other way of making a comparison?

A. I don't understand you.

Q. I think this Board has the duty apparently of making a division between the value of your property that is used for a non-public business and what is used for a public business.

A. Yes sir.

Q. And you won't give me any information direct upon the hypothesis I think we will adopt, that your gas business is public, therefore that forces me to resort to some arbitrary indication and the only way I know of is to divide it either according to receipts, expenses or investment. I want information on those three heads.

A. If you are going to assess this business as a gas business which you may if you choose perhaps, the question is what is that business worth, not what you would place upon it by a suspicious guess; you don't have to guess at it as the evidence is here, what it is doing, what the expenses are and what the receipts are; also the gas lines, there is your statement of receipts which we will furnish more fully.

Q. You are furnishing gas daily to a business that ought to receive about \$10,000 a year, gross, isn't that correct?

A. Gross, oh yes.

Q. I have asked you what that business is worth?

A. You can't tell what the business is worth by giving the gross receipts.

Q. On the contrary I have always understood it was some indication.

A. It is some, and in the use of the word "some", you are quite correct.

Q. I also believe that the amount of investment is some indication.

A. I will give you the original cost of these lines, labor and expenses, and all that as submitted to the Corporation Commission.

Q. Now I want to separate the oil from the gas business?

A. We are not making any statement on the oil business.

Q. The understanding is that this statement you are making is solely on the gas business?

A. These gas lines on this map, the greater part of which I claim is not under the jurisdiction of this Board in any event. I think that adds up in Avant, \$1625; in Big Heart, \$4,137; buried, and all the rest of the lines on the surface of the ground, \$70,918. The original cost, labor and everything of all these lines was about \$77,000. They were put in at an early date.

Q. In addition to your gas lines what other investments did you make in gas property, producing wells or anything else that adds to the gas business?

A. We bought over a great many producing wells.

Q. What investment did you make in gas properties outside of gas pipe lines.



A. If you are going into that I would like to put Mr. Leach on the stand.

Q. You can't answer that question?

A. No. It is some considerable figure you know; if I remember it was \$18,000 in one year.

Q. What is the ratio as near as you can state it of your investment comparing the entire oil and gas properties, both pipe lines and other things?

A. There is no comparison.

46 Q. What is it?

A. I think it was about 1/12, I told you before.

Q. That is the best estimate you can give?

A. Yes sir; I tried to figure with it day before yesterday.

Q. The ratio of gas investment compared to oil investment is what?

A. I say I figured it out a day or two ago and I figured it 1/12.

Q. And then you stated to Mr. Leach that you included the gas investment which would be 1/5?

A. No, I didn't say that. You didn't get it. I said if I included the original investment it would be 1/50.

Q. What was the whole investment?

A. The whole investment was the transfer of this lease for the stock.

Q. How much was it?

A. How much was what?

Q. The whole investment?

A. The lease for the stock.

Q. You say the gas investment is 1/50 of the whole?

A. I didn't say so. I said if certain things were included. You have brought up a discussion between me and Mr. Leach.

Q. I want to get information. You say that your gas investment is 1/50 part of something; I want to know what that something is.

A. I suggested to Mr. Leach if you included the original investment taking the oil properties that were transferred over for the stock, the gas investment would be much less as compared with the oil investment originally.

Q. Than it is now?

A. Yes sir, because the lease is rapidly expiring and the value is rapidly depreciating.

Q. What was the original total investment down to the present time?

A. What do you mean by that down to the present time?

Q. You don't want to answer that question?

A. Certainly I do. I want to know what you mean by original investment down to the present time.

Q. You said to Mr. Leach if you included everything that was invested down to the present time it would be much less. I want to know what that investment was from the beginning?

A. I think I have stated that over and over again.

Q. You don't care to repeat it?

A. No.

Q. What is the ratio of the earnings, receipts, I mean by earnings, gross earnings, receipts of the gas investment compared to the oil investment from the beginning?

A. From the beginning I couldn't state what it was, but we can give you those figures, but it is 1-12 on one year's.

Q. One twel-th now?

A. I did figure it from the beginning at one twelfth.

Q. Then the only comparison I can gather from your statement is on the point of receipts. I can get from you no definite statement as to the ratio of expenses. You say that Mr. Leach can give that. I can gather from you no definite statement as to the gas investment compared to the total investment in figures?

A. Yes sir.

Q. You want to leave it that way in my mind?

A. Yes sir.

(Witness excused.)

MR. CHARLES F. LEACH, after being duly sworn, made the following statement.

By Mr. Brennan:

Q. Where do you reside?

A. Bartlesville.

Q. Are you associated with the Indian Territory Illuminating Oil Co.?

A. As its manager.

Q. How long have you been manager of that company?

A. Since a year ago last September.

Q. Prior to that time were you engaged with that company? In the field?

A. I was.

Q. In the Osage Reservation?

A. Yes sir.

Q. What was your business prior to that time?

47 A. In charge of the Osage Agency in the Indian service.

Q. Do you know that field covered by the map before us thoroughly?

A. Yes sir.

Q. Did you hear some of the questions asked me by General West?

A. I did.

Q. Have you with you figures showing the comparative total expenditures of the oil department as it is from the total expenditure in the gas department?

A. During what period?

Q. From the beginning?

A. I have the expenditures on gas lines for the last year but not a definite expenditure of oil for the reason I didn't contemplate the oil expenditures would be taken up.

Q. Could you secure the statements for the General from the books and forward it here?

A. I could do that.

Mr. West: At the present time can you estimate them?

A. I would estimate them that the oil expenditures were in the neighborhood of \$7,000 a month?

Q. And the gas?

A. The gas expenditures, well I think about \$2500 a month; about \$3,000 a month.

Q. And the oil about \$7,000 a month?

A. Yes sir.

Q. Can you give me an estimate of the oil investment?

A. I cannot, no sir.

Q. Does it show in the books?

A. It perhaps does. I suppose it could be ascertained by going through the books for the various years.

Q. That is a joint investment; the two businesses are managed together aren't they?

A. They are managed together, but we keep the expenditures and receipts separate, that is, I might say, maintenance expenses, office expenses for instance, managers office, help, and such items as that, general expenses.

Q. What do you do with that?

A. That is the only common expense.

Q. In this figure you gave me of \$7,000 a month does that include expenses for general management?

A. Yes sir, that includes the whole thing.

Q. And this figure \$3,000 a month for gas business, does that include any expense for general management?

A. That expenditure, no it didn't.

Q. It didn't?

A. It did not, no sir. That statement, that was constituted of \$14,873 for maintenance of gas, labor, etc. and 28 per cent of the original cost of the wells for gas; that was arrived at in this manner. We took a test, a careful test of the pressure and volume of the wells and every day or two I would take another test showing that these wells had depreciated 28 per cent; deducting 28 per cent of the actual cost of these wells I found it to be \$6,884.

Q. What is the cost of your gas wells?

A. I haven't that here.

Q. You took 28 per cent of some figure, what was the figure you took 28 per cent of?

A. That \$6,887 is the result of 28 per cent of the wells that were in service from which the gas was used.

Q. By finding out what figure 28 will produce \$6,000 then it is clear you at least get the investment of these gas well- that are now in use don't you?

A. Yes, sir.

Q. Can't you give me that figure then at least that far?

A. That can be worked out; that is a matter of computation and can be made at any time.

Q. What part of this \$7,000 a month you attributed to the whole business is based on the same theory—same method as the \$3,000

a month that you attributed to the gas business? In the \$7,000 a month you include general expenses; in the \$3,000 a month you don't include general expenses?

A. No sir, none of the officers' expenses.

Q. Then tell me how much the oil business would be a month on that basis?

48 A. I intended to make myself clear on that basis if I didn't.

Well, I would prefer to make that from the books rather than make the statement for the simple reason I haven't those figures.

Q. We have to settle these things and have to settle them now.

A. I didn't know you were going to take up the oil business.

Q. As an accountant you have had some experience?

A. Well, I am not the accountant of the company.

Q. In the absence of other evidence, isn't a division according to expenses some indication of relative value?

A. Not necessarily so.

Q. I didn't say necessarily so. I said in the absence of other evidence it has some indication?

A. No.

Q. All right.

A. I want to explain my position for the reason that the gross receipts from gas isn't any indication of the value of that property for the simple reason that the expenses besides the gross receipts, will in the case of the whole production show the reverse; one shows a profit and the other doesn't.

Mr. Brennan: It isn't fair nor logical in ordinary cases, the examination you are pursuing because the most of our oil receipts are from royalties from which we have no expenses and from which we have taken out over \$600,000 in eight years. It is net royalty. There are no expenses connected with it so far as we are concerned.

Q. Up to this time I haven't asked you a single thing about the receipts from oil.

Q. How long have you been manager of this company?

Mr. Leach: A year last September.

Q. And have had intimate connection with its affairs?

A. So far as the physical manager of the property.

Q. For the purpose of dividing the value of these properties you can't give me any further information as to the ratio of the expenses in the two business-?

A. No.

Q. Can you give me any information as to the ratio of investment in the two businesses. Can you give me anything as to the total investment in either business?

A. Only what you have before you.

Q. What is that?

A. That affidavit.

Q. I want you to state it?

A. I don't know.

Q. Will you state now as general manager, will you estimate what

the total investment in the gas business is; what the total investment in the oil business is and the ratio of the two?

A. The original?

Q. I said total?

A. If you make it total in the gas business I would state according to my statement returned to the Board of about \$53,000.

Q. Is the total investment in the gas business?

A. Total value.

Q. I want to know what is the total investment?

A. In the pipe lines?

Q. I mean in the gas business?

A. Couldn't do it.

Q. Can you give me the total investment in the oil business?

A. No sir.

Q. Can you approximate it?

A. I wouldn't attempt to.

Q. You won't do it?

A. I don't mean that I will not do it. I mean I can't do it upon the figures before me.

Q. Do you mean you offer to do it hereafter?

A. Yes sir.

Q. You do offer to do it hereafter?

A. So far as I can obtain it.

Q. Well then I will not question you any further until you are further informed. You understand me well enough to know that where you have a mixed business, that is a business that operates two different kinds that ordinarily speaking it is fair to divide the one according to either expenses, receipts or investment and I want to see it in all three ways and any other ways you know of and recommend as being fair.

49 A. It doesn't occur to me that the principal of taxation is upon what a thing costs. It may have been worn out. These pipe lines are not worth as much as they were six years ago.

Mr. Brennan: I would like to submit a statement of the receipts and disbursements of the gas business for the last five years from the books of the office.

(Statement pertaining to the Gas business of the Indian Territory Illuminating Oil Company covering the period from Jan. 1st, 1907 to and including May 31, 1911, offered in evidence and marked Indian Territory Illuminating Oil Company's Exhibit B, and made a part of the record in this case.)

"Indian Territory Illuminating Oil Company.

*Statement Pertaining to Gas Business Only, Showing Receipts from the Sale of Gas and Disbursements in Connection Therewith, Covering the Period from January 1st, 1907, to and including May 31, 1911.*

		Yearly loss.
Receipts from sale of gas Year 1907....	28,415.18	.....
Disbursements ..... Year 1907....	43,330.33	15,915.15
Receipts from sale of gas Year 1908....	30,409.87	.....
Disbursements ..... Year 1908....	43,277.88	12,868.01
Receipts from sale of gas Year 1909....	28,132.94	.....
Disbursements ..... Year 1909....	37,207.79	9,074.85
Receipts from sale of gas Year 1910....	35,947.45	.....
Disbursements ..... Year 1910....	41,700.89	5,753.44
Receipts from sale of gas January 1 to May 31, 1911.....	21,579.99	.....
Disbursements January 1 to May 31 1911 .....	28,998.64	7,418.65
Total Disbursements.....	194,515.53	50,030.10
Total Receipts.....	144,485.43	
	50,030.10	
Total loss .....	50,030.10	50,030.10

Mr. West: Will you submit a statement of receipts and disbursements of the oil business for the same period?

Mr. Brennan: Yes, sir.

(Affidavit of Mr. Mortimer F. Stilwell, offered in evidence and marked Indian Territory Illuminating Company's Exhibit C. and made a part of this record, a copy of which is as follows:)

"To the Corporation Commission of the State of Oklahoma:

STATE OF OKLAHOMA.

Washington County, ss:

Mortimer F. Stilwell, being first duly sworn, doth depose and say: That he is the Secretary and Treasurer of the Indian Territory Illuminating Oil Company; that he was formerly the manager of said Company and became interested in the company as manager about 1903. That he has examined the map drawn and submitted by ———, an engineer for said company and deponent  
50 says that nearly all the buildings of said lines to producers and drillers was built under his supervision. That deponent has made a careful examination of the books of the company to ascertain the actual cost of said lines per mile but that there has been great difficulty in the business for the reason that these lines

are small superficial surface lines and have been moved from time to time to accommodate drilling operations.

That the statement following is true and correct as to actual cost per mile of the said lines of the Indian Territory Illuminating Oil Company shown on the map so submitted by said ———, which includes all connectings, fittings, regulators and all material used in connection with the lines:

That said map shows all of the lines of said company and this statement includes all said lines.

That said Indian Territory Illuminating Company has no real estate except the lease granted by the United States Government over part of the Osage Reservation, except two lots in Bigheart, on one of which is erected a dwelling and on the other a barn and small office, both for the use of one of the line foremen. Its rights of way are granted in the original lease. Said company has no station grounds, no tanks, farms and no pumping stations. Said map designates the size of mains and lateral lines of said company and shows the length, size and kind of said main or lateral lines. The said company leases no lines from other companies, or individuals.

#### In Avant.

			Cash per M.	
1.62 miles 2"	(3.5#	buried at	1003.20 (19c.)	1625.18

#### In Bigheart.

			Per M.	Pr. ft.
.48 Miles 1"	(15#	buried at	633.60 (12c.)	304.13
.78 " 2"	(3.5#	"	1003.20 (19c.)	782.50
1.17 " 3"	(7/54#	"	1795.20 (34c.)	2100.38
.40 " 4 7/8"	(13#	"	2376.00 (45c.)	950.40

#### Fifty Nine Gas Line.

29.90 miles 2"	(3.5#	ground at	6.33.60 (12c.)	18944.64
29.50 " 3"	(7.54#)	"	1478.40 (28c.)	43612.80
2.21 " 4"	(10.66#)	"	1848.00 (35c.)	4048.08
1.80 " 5 5/8"	(16#)	"	2376.00 (45c.)	4276.80

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70918.32

These lines were put in from time to time through the course of six or seven years and were extended and later taken up, moved, etc., from time to time as the development of drilling operations required. Said Company has no substantial large pipe line that will accommodate any large quantity of gas for any great distance. There is no permanency to the lines embraced under the title "Fifty Nine Gas lines." All our rates are flat rates except where we furnish pumping stations on big oil lines, and the metre on the lines of the Bartlesville Gas and Oil Company.

(Signed)

MORTIMER F. STILLWELL.



Subscribed and sworn to before me this 24th day of June, A. D. 1911.

(Signed)

OTTO MASSEY,  
*Notary Public.*

My commission expires March 4th, 1915.

Mr. West: You are willing to show us the figures, the receipts in each business, why do you object to showing the figures of investment in each business.

Mr. Brennan: We come here with all the figures in the gas business; if you want all these other figures we will submit them to you. You have been told by the witness again and again that he hasn't got the figures before him. There isn't any figures you can't have.

Q. There is only one thing I can see before this Board; you have testified in your judgment the business is worth \$500,000?

51 A. Several of our companies that are worth probably millions of dollars we have nothing to do with. The sub-lease is an absolute transfer to them and formally approved by the Secretary of the Interior. Under the law which I called your attention to they are separate and distinct from us as if we were in a separate state. And our 1/24 is paid by the pipe line company separate from them. One section alone I think would be worth over a million dollars that I know of. We have nothing there at all, and we don't even have a royalty from that. That happened to be the only section that was based on the one-eighth royalty. The total royalty paid by the sub-lease is 1/6. The Indian Territory Illuminating Oil Company separate from 30 or 40, or 50 oil companies, it is taken up and put on the carpet as to the value of its property when there are hundreds of companies doing business right under it.

Mr. Cruce: We are trying to get all of them here?

A. This is a public service investigation; they are not public service companies.

Q. I notice this statement, you have been having an annual loss running from \$5,753 up to \$15,915?

A. Yes, sir, on this gas business.

Q. And that loss has been kept up now for five years totalling over fifty thousand dollars?

A. It has been kept up for eight years.

Q. How does your company live under that sort of business?

A. I went over that very carefully. These lines were put in for the purpose of getting the leases; we are interested in all these leases to which these lines run. It is sixty miles from the north end of the lease to the south end. We are interested in these leases. A man say comes over here and takes a section and he wants to drill a well and he says "We will do it if you will give us gas."

Q. Is this company interested in that?

A. Yes, sir.

Q. When you get an interest in that and get your royalty where



do you put that; don't you credit any of that up against this loss you are entailing?

A. No.

Q. Where do you put that profit?

A. That is in the oil.

Q. In other words you charge up your expenses against your gas and credit profits to the oil?

A. Yes, sir. It would be hard for me to ascertain what it would be. That is the reason why I suggest to the Board that that business of moving those surface lines to one producer over here and then if he gets a dry hole we have to move it two or three miles running to properties — which we are interested, that it isn't a public service business.

Q. You contend we have no jurisdiction over these lines you lay out to those gas wells?

A. Yes, sir.

Q. Have you returned that to the local assessor for taxation?

A. We returned it to you. That question of analysis did not occur to me until afterwards, this last week; if it militates against us to return it to you we are willing he should tax us.

Mr. West: How much ought you to be assessed at?

A. All together?

Q. What ought this Board to assess you at?

A. I don't think that you ought to assess those lines that go through those producers.

Q. What ought this Board to assess; what property that belongs to your company?

A. If anything in Avant and Bigheart.

Q. What ought we to assess that at?

A. We will stand for any fair taxes. We won't question any amount.

Q. What ought that property be assessed at in Avant and Bigheart?

Mr. Brennan: What did you say you figured it at?

Mr. Leach: Total receipts?

Mr. West: No, net receipts.

Mr. Leach: Without taking into account the cost of gas it would probably amount to about \$1,200 to \$1,400.

Q. Taking into account the cost of gas what would it amount to?

A. Fifty per cent is usually considered, fifty per cent of the gross receipts is for the gas; where it is furnished on that kind of a basis.

Q. What do you think the property in Bigheart and Avant should be assessed at?

Mr. Brennan: I haven't the least idea, General.

52 Q. I have asked you three or four times, will you state a figure?

A. But I don't know.

Q. You have been given an opportunity haven't you?

A. Yes sir.

Q. How about the property that furnishes these farmers with gas. Will you state a figure for that?

A. I have given you the whole property.

Q. How about the property that furnishes Ochelata, will you state a figure for that?

A. No.

Q. How about the property that furnishes the Osage Indians, will you state a figure for that?

A. That is the same property.

Q. Will you state a figure for it?

A. No.

Q. How about the property that furnishes gas to Bartlesville, you will state a figure for that?

A. That is the same figure.

Q. Will you state a figure for it?

A. No. I don't want to invade your province entirely.

Mr. Cruce: Do you withdraw this first statement you filed with the Board or do you want to stand by that?

A. No, we didn't withdraw it. I only wanted to call your attention to the letter that went along with it.

Q. You have listed your property there at fifty two or fifty three thousand dollars?

A. Yes sir.

Q. And now you say the Board will not tax all of that property?

A. No.

Q. But you refuse to say what the property is worth that the Board should tax?

A. I told the General if the property was assessed at more than that return I wouldn't kick. We haven't kicked on our taxes. Why do you want some statement from me as to what I would do if I was in your place.

Q. I thought you came here to tell us what your property would be taxed at?

A. No, I came over to object to the assessment made in our absence.

Q. You don't propose to say at all what your property should be taxed at?

A. I covered the ground very fully.

Q. Probably I didn't hear you but I have never understood that you ever told this Board what your property should be taxed at?

A. Yes sir, we have got our returns here sworn to. They are before you.

Q. Is that what we should assess your property at, according to this report here?

A. It is the property in Avant and Big Heart that should be assessed if anything and I probably deny you have a right to assess it as a public service corporation at all. First I question the right of the Board to assess the company at all as a public service corporation; second, if it did have that right it should not assess the lines that run to the drillers; third, I introduced in evidence a statement

from an expert showing how much was in Avant and Big Heart; why do you want my evidence after I have introduced that.

Mr. West: You say you have lost for eight years?

A. Oh yes, I know that for every month for eight years.

Q. How much have you lost?

A. I don't know how much but I have furnished statements here in this matter. That will show more clearly than my testimony.

Q. Will you call my attention to the particular figures. I haven't any information on that subject that I know of.

A. All those figures on Exhibit B.

Q. Name them. I want to get at how much you say you have lost every month for eight years. I want to know how many dollars you have lost.

A. This statement shows a net loss for five years of \$50,000.

Q. For eight years how much is it?

A. We will furnish you the statement for the other three years.

Q. We have got to go ahead now. Is it about the same rate?

A. I should judge it must be.

Q. If this was \$50,000 for five years; about \$80,000 for eight years?

A. Yes sir.

Q. Did you make that back off of your oil property?

53 A. I don't know whether we have made it back or not.

Q. But you have kept on doing it for eight years?

A. Yes sir, we kept on developing those properties in that way.

Mr. Cruce: Are you the man who made the original return Mr. Leach?

Mr. Leach: Yes sir.

Q. Is this affidavit of yours correct?

A. I think so in connection with my explanation of it.

Mr. West: Will you object if we assess you at \$300,000?

Mr. Brennan: Yes sir.

Q. I want to explain to you why I suggest that. You testified that the entire property is worth half a million dollars?

A. I testified that in my opinion it ought to be worth that.

Q. Now your manager has shown that there is an expense of \$3,000 a month to the gas business and \$7,000 a month to the oil business and in the oil business is included general expenses, the amount of which I can't get from him and in the absence of other light I am inclined to believe it is half and half. Now then if I divide the property according to expenses the gas property ought to be worth a quarter of a million dollars.

A. You are not doing that correct because I told you that most of the oil business was receipts from royalties amount- to a great deal with reference to which there was no expenses.

Q. Amounted to how much?

A. Well in the last eight years about \$600,000.

Q. \$600,000 in eight years?

A. It is running over that now. It is running \$125,000 a year. That is net profit.

Q. How much is that from wells developed, opened up by your gas system?

A. Probably half.

Mr. Leach: Not hardly.

Mr. West: As much as \$40,000 a year from wells that were opened up under your gas system?

Mr. Brennan: Perhaps so.

Q. In this \$40,000 a year in the wells developed by your gas system how much of that \$40,000 shall we estimate is received due to the fact that you have been furnishing them gas?

A. I don't know. Could you think of estimating that yourself if you knew all the facts?

Q. I don't know the facts.

A. We simply furnish the fuel on the leases. It might be furnished from some other source or some other way or the power might be given in some other way and if you furnish the fuel to a lease and it produces 100 barrels a day how much of the 100 barrels a day would come through your efforts.

Q. I would judge from your case that at least ten thousand a year because you wouldn't keep on losing it unless you are making it back. We can identify at least  $\frac{1}{4}$  of it coming back to you in that way. I want to know how much more. You have no answer to make to that?

A. Oh pshaw.

Q. Have you any other answer?

A. Nothing unless you get my photograph in there.

Q. Is there anything else—you see the line I am trying to follow—is there any other information I ought to have either on this line or any other line?

A. We offered you certain information which we are going to send to you from the oil—a copy of our books.

Q. Is there anything else you can furnish us now?

A. Nothing that I have here.

Q. Is there anything else you care to present now?

A. No, I don't think so.

Mr. Harrison: This is an incorporated concern isn't it?

A. Yes sir.

Q. What was the purpose for which it was incorporated?

A. For the purpose of developing oil territory and gas territory.

Q. It is not for furnishing gas in any instance?

A. I will send you a letter with reference to that.

Mr. Cruce: You keep the books do you Mr. Leach?

A. Well no I don't keep the books. We have a book-keeper.

Q. Now this statement shows disbursements for the year \$41,780. Can you tell the Board what items make up that \$41,000?

A. I could not. I wasn't in the office when that was made up.

54 Mr. Brennan: When this letter was sent in we went on drilling those wells and we got those dry holes.

Q. In your letter of explanation you say against this \$35,947 we

have \$14,714 as cost of maintenance; is that the cost of maintaining your gas plant?

— Leach: Yes sir.

Q. If you didn't charge all this extra stuff up against it you would have a profit then of over \$21,000?

A. Taking no account of the actual cost of gas. You see our gross receipts are not profits. It would be proper to allow something for the cost of gas.

Q. Do you think it would be proper for a farmer out here if he went out and spent \$5,000 this year and didn't raise anything to charge that up against his farm?

A. That is a different situation. If you are selling a property that cost you a certain price say you are selling it for fifty cents and it cost you 25 cents, then your profit would only be the difference between your cost and your gross receipts. Now this gas cost us something. It cost us something originally and there should be some charge against that. As I stated in my other testimony in relation to Bigheart that it is very customary to allow fifty per cent for the cost of gas against the gross receipts. In other words it is a very good rule that gas companies transporting gas furnished to local companies at all the way from forty to sixty per cent of their gross receipts.

Q. How long do your gas wells last?

A. About four years.

Mr. Brennan: All of that?

A. I was going to explain that. That will depend somewhat upon the location of the gas well. If they should be located in among developments where oil is being found it will run out so much quicker.

Mr. Cruce: Now you say by careful computation we find the wells in service to operate this gas deteri-rated during the year 28 per cent. and that 28 per cent of your original cost. That amounted to \$6,874 so you charged that against it?

A. Yes sir.

Q. Do you include in that the cost of your pipe?

A. Yes sir.

Q. Is that pipe worth anything?

A. Well, yes, it is worth something.

Q. Did you take into account in that, in this charge?

A. No. In addition to this we spent over \$15,000 in drilling wells to increase our gas production.

Q. When you have charged all of that in you have \$36,758 of expenses against \$35,947 of receipts or a difference of about \$800. This statement here shows \$5,700.

A. That statement was prepared under the direction of Mr. Brennan. I suppose that included the office expenditures.

Mr. Brennan: That included the wells drilled when you wrote your letter. We included it right down to date.

Mr. Cruce: How many months has that been you have been spending this extra \$5,000. When was this statement made up?

A. This statement was made up a few days ago.

Q. And this other was made up?

A. I think it was in March.

Q. That is about five months? Haven't you received anything at all during that five months?

A. Yes sir.

Q. You lack 46 cents showing as much receipts in this last statement as you did in the former?

A. I can take that back and explain it all.

Mr. Bryan: How many wells have you drilled in the past three months?

A. Two I think.

Q. When you drill these wells if you happen to strike oil what do you do with that, charge the expenses of that to the oil company?

Mr. Brennan: That belongs to the other company.

Mr. Cruce: And the expense of it goes to the other company?

A. Yes sir.

Q. If you go out drilling for oil and strike a dry well do you charge that up to this gas account?

Mr. Leach: No. We have three strings that we have been running regularly for a year that are drilling for gas and we are not making any locations where we think the prospects are in favor of  
55 oil. They are primarily operating for gas; however, if we accidentally open a pool of oil we wouldn't abandon a well on that account but the probabilities are it would be turned over to the party holding the oil right and he would reimburse us for the amount we had expended.

Q. On that one well?

A. On that one well.

Q. All of the profit you would get out of that would go to the oil and all of the loss you would entail would go to gas?

A. But the oil wouldn't belong to us. You see in a large per cent the oil belongs to the sub-lessee, the gas belongs to us. We drilled jointly on these leases; the man who holds the oil right if he drills a gas well he turns it over under the terms of our lease to us at actual cost, and if we drill an oil well we turn it over to him for actual cost.

Mr. Brennan: It is all sub-leased with the exception of 32 which has about 1200 acres; there are about 20,000 acres over here (referring to map) which belongs to the company; we drill on sub-leased property. The oil wells belong to the sub-lease company.

The following statement was read into the record regarding the Indian Territory Illuminating Oil Company's property being assessed by the State Board of Equalization:



"To the State Board of Equalization Having Power to Assess Public Service Corporations under the Constitution:

In the Matter of the Assessment of The Indian Territory Illuminating Oil Company.

The Indian Territory Illuminating Oil Company respectfully insists before this Honorable Board as follows:

1st. That no part of the property of said Company is assessable by this Board as being used in Public Service, and that in the conduct of no part of its business is said Company a Public Service Corporation.

2nd. That the business of said Company is confined to that part of Oklahoma which is known as the Osage Reservation, being the property of the Osage Tribe of Indians; that the business of said Company is wholly conducted under and by virtue of a deed, license or grant by the United States Government to said Company, renewed by Act of Congress of March 3rd, 1905—specifically mentioning said Company by name and endorsing and continuing its said lease or grant; that said lease is for the production of petroleum and natural gas on said reservation only, and that the Osage Tribe of Indians, as a tribe, is a party of the first part to said lease, and that said petroleum and natural gas is wholly tribal property, was tribal property at the time of said grant, and by the Osage Allotment Bill of June 28th, 1906, was ordained to be continued as tribal property for twenty-five years; that all the operations of said Company on said reservation, under and by virtue of said lease, are by virtue of said grant, and the rules and regulations of the Honorable Secretary of the Interior of the United States Government, a copy of which is hereto annexed and made a part hereof; and that the officers and agents of said United States Government, together with their Inspectors of Gas operation, are actually in charge of the yield operations of said Company, representing said Government as the guardian of said tribe of Indians, and that this company is subject to the provisions and conditions of said lease, and to the rules and regulations of the Federal Government in that regard. A copy of said lease or grant has heretofore been filed with this Honorable Board in these proceedings.

3rd. That the small surface gas lines embraced in this inquiry and belonging to the Company are a very small part of the business of the Company—its said business being primarily, and almost wholly, the production of petroleum or oil. Said lines were built and extended from time to time on the surface of the ground for the purpose of temporarily conveying gas to producers of oil—all of whom were, and are, sub-lessees of this Company, and in each of which said

sub-lessees this Company has always had, and now has, a substantial interest—and the furnishing of said gas was for the purpose of promoting the development of the property of this Company, as aforesaid, and not to realize a separate profit from the conduct of said gas business; that said lines are taken up and moved from time to time according to the exigencies of the

business of oil development or the drilling of wells. It is a fuel business, to supply power in the drilling of wells, for which a flat rate is charged entirely inconsistent with the quantity of gas used.

4th. That said business has always been, and is now, conducted at a loss by said Company, and would not be carried on were it not for the interest that said Company has in the said sub-leases reached by said lines.

5th. That after said system was so instituted, from time to time this Company furnished the little town- of Bigheart and Avant with gas for domestic purposes, at the earnest request of the few inhabitants thereof. This Company has no franchise, permit or contract from or with said towns; that the furnishing thereof is a part of the same system or purpose as heretofore set forth, for the reason that said settlements, or towns, are located in and near the oil operations, and are settled by those who are interested in the drilling, or accommodate those who reside on the leases and are engaged in the drilling in various ways. Said towns are located wholly in the Osage Reservation, and the receipts from service therein are wholly insufficient to pay for the investment and cost of maintenance.

6th. That nearly four-fifths of the gas lines and property returned by the officers of this company to this Board is that which is embraced in the service of gas and drillers and producers of oil, and that said lines were erroneously included in the return, and the Company respectfully insists that, in any event, that part of said lines which is used in the lease operations under the original lease should not be included as Public Service under the Laws of Oklahoma.

7th. That said Company also furnishes gas to the Ochelata Gas and Water Company, but that this Company does not serve the inhabitants of Ochelata, and does not conduct its lines in that regard beyond the line of said Reservation, but delivers said gas at the line, for the reason that said point is near one of said surface lines, but that no receipts have ever been received therefrom during the last year and more, and that this Company would not continue the same were it not for the resulting harm and suffering that might be caused the people of Ochelata.

Through these surface lines said Company also is now receiving about two hundred dollars a month for gas from the Bartlesville Gas and Oil Company.

8th. That no part of said surface line system could be used in conducting any substantial quantity of gas to any distance to furnish larger consumption -or cities.

9th. That except as aforesaid, the business of said Company is the production of oil itself and the obtaining of a royalty from sub-leases and from oil operations thereon; that such profit as the Company makes is derived wholly from its oil business, and that its capital stock represents its oil business, but that said capital stock has no market value, and has been offered as low as fifteen cents per share. That the capital stock of said Company does not represent an actual cash investment equal to the face value of the stock, but that said



stock was issued to the former owners of the lease from the Government in payment for their properties, being said lease-hold.

10th. This Company respectfully insists that the sworn return to this Board should not be changed in any event and that the assessed value of the property, as herein indicated, should not be raised except upon evidence that said return is incorrect; and that said return was raised without notice to said Company.

11th. That the figures to which said assessment against said Company was raised are erroneous, inequitable and unjust to such an extent that it will result in confiscation of the property of this Company if this Company were compelled to pay the taxes based upon said assessment, and this Company will be absolutely unable to perform the duties of said lease or contract with the United States Government, in the event that such taxes should be enforced or should be paid, and that, therefore, said tax would impose a burden upon Commerce with an Indian Tribe.

12th. That the value of the property of this Company, including all its oil business and properties, is far less than the figure to which this assessment has been raised. That the lease of this Company expires in five years, and there is no provision for a renewal thereof.

13th. That this Company is now paying, and has heretofore paid ever since Statehood, taxes on all its oil production, under the gross production tax in Oklahoma, and in the same manner it is paying, and has heretofore paid, a gross production tax on the gas as produced, and also a tax on the same gas when transmitted through pipe lines, and also a tax upon the same pipe lines; that every piece and part of said Company's property is taxed under some law of Oklahoma, and that its gross receipts are reached by the gross production tax.

14th. That such franchise, occupation and business as is owned or engaged in by said Company is, by virtue of said grant, license or lease from the Federal Government, and said franchise, right or occupation can not be taxed by the State of Oklahoma.

(Signed)

JOHN H. BRENNAN.  
KENNETH C. CRAIN.

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

John H. Brennan, being first duly sworn, deposeth and saith that he is a stock holder, a director of, and attorney for the above named Indian Territory Illuminating Oil Company; that he has read the foregoing statement, knows the contents thereof, and that the matters and things therein set forth are true to his personal knowledge.

(Signed)

JOHN H. BRENNAN.

Subscribed and sworn to before me this, the 29th day of June, 1911.

(Signed)

EUGENIA DAVIS,  
*Notary Public.*

My commission expires, June 25th, 1914.

(The witnesses were here excused and no more testimony was taken in the case of the Indian Territory Illuminating Oil Company.)

58 Exhibit A of the Indian Territory Illuminating Oil Company at the hearing of June 29th, being a map of that part of Osage County, Oklahoma, comprised in the said Company's lease, is a part of the record in the said Company's first appeal in the matter of its assessment, No. 2845 in the Supreme Court of Oklahoma, and cannot be duplicated in this record.

Witness my hand, this 30th day of October, 1911.

LEO MEYER,

*State Auditor, ex-Officio Secretary  
of the State Board of Equalization.*

59 (EXHIBIT "A" TO STATEMENT OF JOHN H. BRENAN.)

*Regulations Governing the Leasing of Lands for Oil and Gas on the Osage Reservation, Oklahoma, Under the Act of March 3, 1905.*

The following regulations are hereby prescribed for the purpose of carrying into effect the provisions of the act of Congress approved March 3, 1905 (Public. 112), which provides:

That any allotment which may be made of the Osage Reservation in Oklahoma Territory shall be made subject to the terms and conditions of the lease herein authorized, the same being a renewal as to a part of the premises covered by a certain lease dated March sixteenth, eighteen hundred and ninety-six, given by the Osage Nation of Indians to Edwin B. Foster and approved by the Secretary of the Interior and now owned by the Indian Territory Illuminating Oil Company under assignments approved by the Secretary of the Interior, which said lease and all subleases thereof duly executed on or before December thirty-first, nineteen hundred and four, or executed after that date based upon contracts made prior thereto, and which have been or shall be approved by the Secretary of the Interior, to the extent of six hundred and eighty thousand acres in the aggregate, are hereby extended for the period of ten years from the sixteenth day of March, nineteen hundred and six, with all the conditions of said original lease except that from and after the sixteenth day of March, nineteen hundred and six, the royalty to be paid on gas shall be one hundred dollars per annum on each gas well, instead of fifty dollars as now provided in said lease, and except that the President of the United States shall determine the amount of royalty to be paid for oil. Said determination shall be evidenced by filing with the Secretary of the Interior on or before December thirty-first, nineteen hundred and five, such determination; and the Secretary of the Interior shall immediately mail to the Indian Territory Illuminating Oil Company and each sublessee a copy thereof.

The said act of March 3, 1905, renews and extends the—

said leases and all subleases thereof duly executed on or before December thirty-first nineteen hundred and four, or executed after that date based upon contract made prior thereto, and which have been or shall be approved by the Secretary of the Interior, to the extent of six hundred and eighty thousand acres in the aggregate \* \* \*

Section 1. The original lease and all subleases and assignment thereunder provided for by the act of Congress of March 3, 1905, above referred to, are, when approved by the Secretary of the Interior, extended for a period not longer than March 16, 1916.

Section 2. All subleases or assignments made hereafter must be submitted to the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, for consideration and transmittal to the Department within thirty days from and after the date of execution of the instrument, and all such subleases and assignments which have been heretofore executed must be submitted to the said agent within thirty days of the approval of these regulations. No such sublease or assignment presented after the time herein designated will be received by the agent or transmittal to the Department or regarded as having any effect whatever.

Section 3. All subleases or assignments or instruments operating as assignments to be presented for the approval of the Secretary of the Interior shall be submitted to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, for transmittal by him with his recommendation to the Commissioner of Indian Affairs, for the consideration of the Department.

Section 4. All subleases or assignments must be made in triplicate, filed with the Indian Agent, Osage Agency, and, when approved, one copy to be immediately filed in the office of the Commissioner of Indian Affairs, one to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, and one to be delivered to the lessee or assignee.

Section 5. All sublessees or assignees will be required to furnish a bond of not less than \$3,000, and larger amounts where recommended by the Indian Agent, executed by some responsible surety company, guaranteeing the payment of all rents or royalties at the time and in the manner specified in the sublease or assignment, and the performance of all covenants and agreements named in the indenture to be paid and performed by the lessee.

Section 6. In order that the Department may have definite information before it concerning lessees in oil and gas leases covering lands in the Osage Nation, it is required that corporation lessees must furnish a certified copy of their articles of incorporation and affidavits covering the following points, to be submitted to the said U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, with the triplicate copies of subleases or assignments, heretofore referred to in section 4:

(a) A list of officers and directors.

(b) State the number of shares of stock issued, and by whom held, giving post-office addresses of stockholders, and specifically stating the amount of cash paid into the treasury on each share sold;

or if paid in property, state kind, quantity, and sum paid per share.

59b (c) Of the stock sold, how much per share remains unpaid and subject to assessment?

(d) How much cash has the company in its treasury and elsewhere? Certificates by officers of the banks should be furnished showing the amount deposited therein to the credit and subject to the check of the company.

(e) What property, exclusive of cash, is owned by the company and its value?

(f) What is the total indebtedness of the company, and specifically the nature of its obligations?

(g) State what experience the officers of the company or others connected with or employed by it have had in the production of petroleum and natural gas, or in any other business.

Affidavits should also be furnished by individual lessees showing their financial responsibility, the amount of cash on hand available for mining operations, and their experience in the oil and gas business or other business. They should also submit affidavits by bank officers showing the amounts deposited to their credit.

All required information relative to subleases or assignments shall be furnished within fifteen days from the date of the letter of the U. S. Indian Agent, Osage Agency, requesting it.

Section 7. There shall accompany each sublease or assignment a statement under oath by the applicant that such sublease or assignment is not made for speculation, but in good faith and for mining the mineral specified, and such persons or corporations must furnish such other information as may be desired by the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, or other authorized officer of the Interior Department, regarding their prospective operations. Subleases or assignments will not be approved where the parties themselves do not intend to conduct the operations on the land.

Section 8. All subleases or assignments must accurately describe the lands, and specify the mineral to be mined, the rents or royalties, when the same are to be paid, and must contain a provision to the effect that if the lessee shall fail to pay the rents or royalties, or any part thereof when due, or shall fail to faithfully comply with the terms and conditions of the lease, such failure shall constitute a forfeiture of the sublease or assignment and all improvements placed upon the land by the lessee, the Osage Nation shall be entitled to immediate possession of the leased lands and the improvements located thereon, and shall in all respects be subject to the provisions and penalties of the original lease now owned by the Indian Territory Illuminating Oil Company.

59c Section 9. All lessees must agree to allow the lessor and his agents and any authorized representative of the Interior Department, from time to time, to enter upon and into all parts of the leased premises for the purposes of inspection, and agree to keep a full and correct account of all of their operations, and make report thereof, promptly at the end of each month to the lessor or to

such persons as may be designated by the Secretary of the Interior, and their books shall be open at all times to the examination of such officers of the Department as may be instructed in writing by the Secretary of the Interior to make such examination. All subleases or assignments must be executed in the presence of two subscribing witnesses, the post-office address of each party in interest must be shown by the lease which is sought to be approved, and the post-office addresses of the subscribing witnesses must appear upon the papers.

Section 10. All rents, royalties, or payments accruing under any lease, sublease, or assignment, to the Osage tribe of Indians, which have been approved by the Secretary of the Interior, or which require his approval, shall be paid to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, or to such other officer or person as the Secretary of the Interior may designate.

Section 11. With the consent of the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, lessees may make arrangements with the purchasers of oil for the payment of royalty to the U. S. Indian Agent by such purchasers, but such arrangement, if made, shall not operate to relieve the lessee from the responsibility of the payment of the royalty should such purchaser fail, neglect, or refuse to pay same when it becomes due, but in such cases no oil shall be extracted from such lands or removed therefrom until such arrangements have been perfected with the said Indian Agent.

Section 12. No lease, sublease, or interest therein, by working or drilling contract or assignment, or otherwise, or the use thereof, directly or indirectly, shall be valid or recognized, without the consent of the Secretary of the Interior, nor shall any operations thereunder be commenced until after approval by him; and if at any time the Secretary of the Interior is satisfied that the provisions of any lease or that any of the regulations heretofore or that may hereafter be prescribed, have been violated, he shall have authority, after ten days from notice to the parties, to cancel and annul such lease, without resorting to the courts and without any further proceedings, and the lessor shall be entitled to immediate possession of the lands.

Section 13. These regulations shall be applicable to all leases, subleases, or assignments heretofore made, as well as to those that may hereafter be made.

#### 59d *Rules and Regulations for Operating Properties.*

Section 1. All persons or corporations operating under these regulations, before commencing operations on any lands allotted to Indians and during such operations, shall duly compensate such Indians for damages done to the surface of the land in cultivation, and where such can not be satisfactorily adjusted, the matter shall be investigated by the U. S. Indian Agent, and such payments as he may determine shall be made, subject to appeal from his decision to the Commissioner of Indian Affairs.

Section 2. Lessees shall not be allowed to drill oil or gas wells within 200 feet of the division line between the lands covered by their

leases and adjoining lands, whether the latter lands are leased or unleased, allotted or unallotted, nor shall any wells be drilled within 35 feet of any section line on the Osage Reservation.

Section 3. All persons or corporations drilling wells under approved leases, subleases, or assignments upon the Osage Reservation shall keep a true and correct record of each well, including the log of the same, and shall furnish to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, a copy of said log not later than fifteen days after the said well has been drilled, duly certified to under oath, by the driller and operator or his representative, and the said operator or his representative shall furnish a further statement under oath as to whether the rig timbers were procured on the Osage Reservation, and if so, state the name of the citizen, or other person, from whom the said rig timbers were purchased, and shall also furnish any other information the said Agent may desire relative to the drilling of said well, or the procurement of timber used in connection with such operation.

Section 4. All lessees or operators for the mining and production of petroleum and natural gas on the Osage Reservation shall, in a practical and workmanlike manner, plug all of their dry and abandoned oil and gas wells at a proper depth with wood or sediment in a manner to exclude all fresh or salt water from the oil or gas bearing rock or sand before the casing is drawn from the said well in a manner satisfactory to the United States Indian Agent for the Osage Indians, and to this end the following general regulations must be followed, but the lessee will be required to exercise his judgment and put in such other necessary plugs as will effectually protect all stratas of oil or gas bearing rock or sand from fresh or salt water, so that the results contemplated will be obtained, and the said lessee or operator shall furnish an affidavit by himself or his representative and one other person, who assisted in the plugging of said well, stating in detail the manner in which the said well was plugged, and shall also furnish a log of the well, certified to under oath, by himself or his representative and the driller, the said log to be attached to the  
59e affidavit as to the plugging of the well, and they together shall be filed with the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, not later than fifteen days after the said oil or gas well has been abandoned.

Before the casing shall be drawn from any well for the purpose of abandonment thereof, which has been drilled into any oil or gas bearing rock or sand, it shall be the duty of the lessee or operator having the custody or control of such well at the time of such abandonment, to properly and securely stop or plug the same in the following manner:

Such hole shall first be solidly filled from the bottom thereof to a point at least twenty-five feet above such gas or oil bearing rock or sand with sand, gravel, or pulverized rock; immediately on the top of such filling shall be seated a dry pine plug, not less than two feet in length, having a diameter not less than one-fourth of an inch less than the inside diameter of the casing in such well; above such wooden plug such well shall be solidly filled for at least twenty-five



feet with the above-mentioned filling material, immediately above which shall be seated another wood plug of the same kind and size as above provided, and such well shall again be solidly filled for at least twenty-five feet above such plug with the said filling material. After the casing has been drawn from such well there shall be immediately seated at the point where such casing was seated a cast-iron ball or tapered wood plug at least two feet in length, the diameter of which ball or the top of which plug shall be greater than that of the hole below the point where such casing was seated, and above such ball or plug such well shall be solidly filled with the aforesaid filling material for at least a distance of fifty feet.

Section 5. All lessees and operators upon the abandonment or ceasing to use and operate any well which shall have been drilled for oil or gas, he or they shall plug the same so as to completely shut off and prevent the escape of all water therefrom which may be impregnated with salt or other substances which will render such water unfit for use for domestic, steam making, or manufacturing purposes, and in such manner as to prevent water from any such well injuring or polluting any spring, water well, or stream which is or may be used for the purposes aforesaid.

Section 6. All "B-S" or other refuse from tanks and wells shall be drawn off in proper receptacles at a convenient distance from the tanks or wells, to the end, that it may be disposed of by being burned, and in no case or circumstance shall it be permitted to flow over the surface of the land to the injury of any surrounding property or the pollution of any stream.

Section 7. All lessees and operators in possession of any well producing natural gas on the Osage Reservation, in order to prevent the said gas from wasting by escape, shall within ten days after the approval of these regulations, and thereafter within five days after penetrating the gas bearing rock or sand in any well drilled, shut in and confine the gas in said well until such time as the gas therein shall be utilized for light, fuel, or steam power; provided that this regulation shall not apply to any well that is operated for oil when the production of the oil has a greater available market value than the production of gas therefrom, or during the process of drilling, with reasonable diligence, or when oil is found in a lower stratum of sand and the well is operated as an oil well and the gas from the upper stratum of sand is cased off. And said lessees and operators shall pay to the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, the sum of \$10.00 per day for each well during the time such well or wells are allowed to go uncontrolled or uncared for, as directed by this section, unavoidable accidents excepted.

Section 8. All lessees, and those operating under them, on the Osage Reservation, using natural gas for fuel in steam boilers, shall provide the same, within thirty days after the approval of these regulations, with what is known as a "Fulton," "Northrup," or "Gillfillen" boiler regulator, or other regulator equal thereto, so connected to the boiler that the steam pressure will regulate the flow of gas.

Section 9. All lessees, and those operating under them, who are

or may hereafter be using natural gas for outside illumination upon their premises, shall not use the said gas for illuminating purposes, other than in what is known as "Storm" burners, or burners which consume no more gas than the said "Storm" burners, and anyone using such gas in the open air or in and around derricks, shall turn off said gas not later than 8 o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of 8 o'clock a. m. and 5 o'clock p. m., and the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, shall be the judge as to the number of lights permitted upon and around any lease, subject to appeal to the Commissioner of Indian Affairs.

Section 10. Any gas well upon the Osage Reservation which has been placed in service commercially, and for which royalty is being paid, will not be considered out of service until due notice has been served on the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, of the same, and that the said well has been disconnected from all service lines. The mere turning of a valve will not be considered sufficient to take a well out of service.

Section 11. The regulations shall be applicable to leases, subleases, and assignments heretofore approved, as well as those that may be hereafter approved, and for any failure on the part of the lessee to comply with any rule or regulation, or any obligation 59g in his lease, sublease, or assignment, the Secretary of the Interior may revoke his approval of such lease, after due notice to the lessee.

Section 12. Wherever in the drilling of oil or gas wells under approved oil and gas mining leases covering lands within the Osage Reservation both gas and oil are encountered in commercial quantities, and the gas is found in a formation sufficiently above the oil-bearing sand to permit of the same being separated from the oil by casing, such gas shall be so separated from the oil and securely shut in and preserved, and shall not be permitted to flow with the oil through the same string of casing.

Department of the Interior.

Office of Indian Affairs.

April 8, 1907.

The foregoing regulations are respectfully submitted for the approval of the Secretary of the Interior.

C. F. LARRABEE,  
*Acting Commissioner.*

Department of the Interior.

April 17, 1907.

Approved:

JAMES RUDOLPH GARFIELD,  
*Secretary.*



- 60 That thereafter, and on the 17th day of July, 1911, the following proceedings were had before said Board of Equalization relating to the assessment of the said Company, to-wit:
- 61 The State Board of Equalization met at ten o'clock a. m., Monday, July 17, 1911, with the following members present:

Governor Lee Cruce, Chairman.

State Auditor Leo Meyer, Secretary.

State Treasurer Robert Dunlop.

Secretary of State Ben F. Harrison.

President Board of Agriculture, G. T. Bryan.

Attorney General Charles West.

State Examiner and Inspector Charles A. Taylor absent from the city under the direction of a physician on account of illness.

\* \* \* \* \*

Mr. Crane (Representing the Indian Territory Illuminating Oil Co.):

I would like to know if the Board at this time is prepared to take any further steps in connection with the assessment of the Indian Territory Illuminating Oil Company, or is there anything we can do to enlighten the Board any further.

Mr. West: I don't remember how that stands.

Mr. Crane: It stands on the hearing had on June 29th, with the manager of the company, counsel of the company and one director present, both subject to examination and presented exhibits and oral testimony, Mr. Brennan and Mr. Leach.

Mr. West: During the examination of the Indian Territory Illuminating Oil Company there were a great many questions asked of Mr. Leach and Mr. Brennan, and I still want an answer to all of those that are not answered. It seems to me there were hardly any of them answered.

Mr. Crane: There were several statements that were to be taken up by letter, and several of them you wanted at that time, and if the Board still wants that information we will be glad to furnish it. We understood nothing further after that; thought it would be accepted. We are entirely open to all inquiry the Board desires to make.

Mr. West: I think the record that was taken at the time will show you better what we desire to know. I forget now about it. Mr. Orr has told me something about it, but my recollection is that this is the company that has that oil business and that gas business in the Osage Nation.

Mr. Crane: Yes, sir.

Mr. West: And there was a great deal I desire to know and asked about at the time which it seems to me was unanswered and as long as the Board is in session I will be in favor of hearing anything else you have to say about those matters.

Mr. Crane: Certain questions about the oil business which were not answered at that time if the Board desires we will be glad to present to you.

Mr. West: Can you do it to-day?

Mr. Crane: It will be impossible to do it to-day.

Mr. West: Can you do it on the second of August?

Mr. West: I move the Board reconsider anything further the Indian Territory Illuminating Oil Company desires to present on the second of August, 1911.

Mr. Dunlop: Second the motion. Motion carried.

\* \* \* \* \*

62 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of The Indian Territory Illuminating Oil Co.

*Reporter's Certificate.*

B. R. Simpson, of lawful age, being first duly sworn, on oath says: That he is one of the official stenographers and reporters of the proceedings of the State Board of Equalization; that in such capacity, he attended the meetings of said Board held on the 29th day of June and the 17th day of July, 1911, and faithfully and correctly reported the proceedings at said meetings in shorthand; and that the foregoing pages, headed and dated as of those days, contain a full, true, correct and accurate transcript of his shorthand notes of the proceedings had on said days relating to the assessment of the Indian Territory Illuminating Oil Company, and a full, true, correct and complete record of all oral and written testimony, and of all exhibits, statements and pleadings introduced thereat in connection with the assessment of said Company, and of the rulings and orders of said Board in relation thereto.

B. R. SIMPSON,  
*Official Reporter.*

Subscribed and sworn to before me, this 30th day of October, 1911.

[SEAL.]

E. F. KEYS,  
*Notary Public.*

My commission expires January 4, 1915.

63 That thereafter, and on the 2d day of August, 1911, the following proceedings were had before said Board relative to the assessment of said Company:

64 The State Board of Equalization met at two o'clock p. m., August 2nd, 1911, with all members present.

The following proceedings were had:

\* \* \* \* \*

Mr. K. C. Crain representing the Indian Territory Illuminating Oil Company appeared before the Board and made a statement relative to the assessment of that company, and offered the affidavit of Mr. Charles F. Leach, manager of the above named company as an exhibit in these proceedings, which was marked Indian Territory

Illuminating Oil Company's Exhibit A-1, and made a part of the record herein and attached hereto. Also offered as an exhibit the exact copy of the original lease of said company above mentioned, which was marked Indian Territory Illuminating Oil Company's Exhibit B-1 attached hereto and made a part of the record in this case.

\* \* \* \* \*

65 (Before the State Board of Equalization of Oklahoma.)

STATE OF OKLAHOMA,

*Washington County, ss:*

Charles F. Leech, of lawful age, being first duly sworn, on oath says: That he is the manager of the Indian Territory Illuminating Oil Company, a corporation organized under the laws of the State of New Jersey, doing business in the State of Oklahoma; that as such manager he has charge of the books and records and business of said company; and that from said books and records he has prepared and presents herewith the following figures and statements, which are hereto attached and made a part hereof, under the exhibit numbers indicated, i. e.:

Exhibit A. Statement of receipts and disbursements from oil and gas prior to Jan. 1, 1907.

Exhibit B. Receipts and disbursements in oil business, Jan. 1, 1907, to May 31, 1911.

Exhibit C. Receipts and disbursements in gas business prior to Jan. 1, 1907.

Exhibit D. Cost of gas wells.

That said exhibits are substantially correct and accurate; that an exactly accurate and absolutely complete statement to cover minor items not included therein, would require months of labor, in an extensive auditing of said company's books and records, but that said exhibits, figures and statements, with the figures and statements heretofore introduced before said Board, show comprehensively the business of the said company, and that any changes which a more exact and complete statement might make would not affect materially the general showing of the business of the said company; and further affiant saith not.

CHAS. F. LEECH.

Subscribed and sworn to before me this 1st day of August, A. D. 1911.

[SEAL.]

THOS. F. GORMAN, *Notary Public.*

My commission expires Jan. 25th, 1912.

Exhibit A-1.

*Statement of Receipts from Oil and Gas.*

Prior to January 1, 1907.

	Receipts.		Disbursements.	
ality .....	266,722 70		.....	
32.....	33,449 46		19,765 09	
2.....	979 37		6,627 54	
164.....	.....		661 66	
293.....	726 89		5,913 76	
	<u>301,928 42</u>		<u>32,968 05</u>	
.....	50,901 32		57,413 70	
	<u>50,901 32</u>		<u>57,413 70</u>	

*Expenses of Carrying on Business.*

Same Period.

gal Expense .....	34,134 76	
neral Expense .....	45,166 44	
x .....	3,685 90	
orse, Buggy & Harness....	821 78	
w York Office.....	1,417 44	
rtlesville Office .....	13,585 57	
" " Rent.....	1,691 00	
	<u>100,501 29</u>	
	352,829 74	
	<u>190,883 04</u>	

Exhibit A.

*Summary of Receipts and Disbursements in the Oil Business  
as Shown by Detailed Statements Attached.*

	Receipts.	Disbursements.	Profits.
or the Year 1907.....	99,266 17	42,602 97	56,663 20
" " 1908.....	135,759 66	66,840 13	68,919 53
" " 1909.....	93,157 64	40,634 77	52,522 87
" " 1910.....	118,687 49	36,593 19	82,094 30
" " 1911.....	.....	.....	.....
an. 1 to May 31.....	82,524 61	27,745 82	54,778 79
Totals.....	<u>529,395 57</u>	<u>214,416 88</u>	<u>314,978 69</u>

Exhibit B.

*Statement of Receipts and Disbursements in Oil Business for Year 1907.*

Lot 32.

	Receipts.	Disbursements.
Oil, Lot 32.....	3,433 77	
Lot 32, Expense.....	394 90	3,731 53
" 32, Drilling.....		2,602 40
" 32, Torpedo.....		382 00
" 32, Supply.....		2,836 45
" 32, Tank.....	750 93	2,238 07
" 32, Bldg. & Rig.....	325 00	1,047 55
" 32, Water Plant.....		519 81
Royalty, Oil.....	4,904 60	13,357 81
	<u>93,021 40</u>	<u>6,506 74</u>
		<u>6,506 74</u>

Lot 293.

Lot 293, Oil.....	1,324 99	
" 293, Expense.....		737 43
" 293, Supply.....		208 91
" 293, Bldg. & Rig.....		15 50
General Expense.....	1,324 99	961 84
Tax.....		10,912 81
New York Office.....		3,810 35
Furniture & Fixtures.....		1,097 91
Legal Expense.....		306 36
Bartlesville Office.....	9 90	8,968 22
	12 88	6,549 86

Horse, Buggy & Harness.....	456 85		
Bartlesville Office Rent.....	582 50		
		22 78	
2/3 of this expense chargeable to oil.....		15 18	21,776 58
Totals for year 1907.....		99,266 17	42,602 97

69 *Statement of Receipts and Disbursements in Oil Business for Year 1908.*

Lot 32.

Lot 32, Oil .....	46,923 56		
" 32, Expense .....	429 00		10,448 45
" 32, Supply .....	2,068 86		13,924 00
" 32, Bldg. & Rig.....	.....		3,922 68
" 32, Water Plant .....	100 00		449 54
" 32, Cleaning Wells .....	.....		1,075 00
" 32, Torpedo .....	.....		819 00
" 32, Tank .....	.....		1,675 30
" 32, Drilling .....	.....		7,169 60
Royalty, Oil.....	85,057 45	49,521 42	39,483 57
		85,057 45	5,591 90

Lot 293.

Lot 293, Oil .....	1,096 71		
" 293, Expense .....	.....		562 69
" 293, Cleaning .....	.....		192 50
" 293, Supply .....	54 08		89 05
" 293, Bldg. & Rig .....	.....	1,150 79	55 48
			899 72

	Receipts.	Disbursements.
General Expense .....		11,339 03
Legal Expense .....	45 00	7,055 87
Tax .....		5,080 43
Horse, Buggy & Harness .....		713 12
Bartlesville Office .....		4,285 23
" " Rent .....		543 75
Attorney's Salary .....		1,201 98
New York Office .....		498 00
General Rig .....		580 00
2/3 of this expense chargeable to oil .....	45 00	31,297 41
Totals for year 1908 .....	30 00	20,864 94
		66,840 13

70 *Statement of Receipts and Disbursements in Oil Business for Year 1909.*

Lot 32.

	Receipts.	Disbursements.
Lot 32, Oil .....	18,508 00	6,645 80
" 32, Expense .....	350 00	1,773 57
" 32, Supply .....	778 92	253 40
" 32, Bldg. & Rig .....		1,175 30
" 32, Drilling .....		138 72
" 32, Water Plant .....		88 84
" 32, Tank .....		315 00
" 32, Torpedo .....		
Royalty, Oil .....	19,636 92	10,390 63
	71,953 56	4,699 74
		71,953 56



Lot 293.		Lot 293.	
Lot 293, Oil .....	1,515 90	1,309 71	
" 293, Supply .....	34 00	864 11	
" 293, Bldg. & Rig .....		92 38	
" 293, Torpedo .....		423 00	
" 293, Cleaning .....		753 50	
		<u>1,549 90</u>	<u>3,442 70</u>
General Expense .....		13,245 26	
Legal Expense .....		9,113 30	
Tax .....	25 88	3,643 35	
Horse, Buggy & Harness .....		211 00	
New York Office .....		512 75	
Bartlesville Office .....		4,936 48	
" " Rent .....		798 05	
General Rig .....		543 77	
Furniture & Fixtures .....		148 60	
	<u>25 88</u>	<u>23,152 56</u>	<u>22,101 70</u>
2/3 of this expense chargeable to oil .....		.....	
Totals for year 1909 .....		<u>17 26</u>	<u>40,634 77</u>
		93,157 64	

71 *Statement of Receipts and Disbursements in Oil Business for Year 1910.*

*In Oil Business for Year 1910.*

Lot 32.		Disbursements.
Lot 32.		
Lot 32, Oil .....	Receipts.	
" 32, Expense .....	21,263 63	
" 32, Supply .....	95 00	7,104 18
	3 50	2,473 62

	Receipts.	Disbursements.	
" 32, Bldg. & Rig.	.....	1,436 48	
" 32, Drilling	.....	1,040 00	
" 32, Tank	.....	67 94	
Royalty, Oil	21,362 13		12,122 22
	<u>94,802 22</u>	<u>4,999 74</u>	<u>4,999 74</u>
Lot 293.			
Lot 293, Oil	.....		
" 293, Expense	1,916 34		
" 293, Supply	.....	1,009 94	
	<u>.....</u>	<u>105 72</u>	<u>1,115 66</u>
	1,916 34		
Lot 275.			
Lot 275, Oil	.....		
" 275, Purchase Price	595 83		
" 275, Expense	.....	3,000 00	
" 275, Bldg. & Rig.	10 97	519 55	
" 275, Supply	.....	27 50	
	<u>.....</u>	<u>16 78</u>	
General Expense	606 80		3,563 83
Legal Expense	.....	13,642 28	
Tax	.....	6,348 67	
Horse, Buggy & Harness	.....	8,222 24	
Bartlesville Office	.....	325 75	
" " Rent	.....	2,845 54	
General Well	.....	1,139 88	
	.....	<u>3,346 47</u>	

General Rig.....	489 17
Furniture & Fixtures.....	827 62
	<hr/>
2/3 of this expense chargeable to oil.....	37,187 62
	.....
	<hr/>
Totals for year 1910.....	118,687 49
	<hr/>
	14,791 74
	<hr/>
	36,593 19

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*Statement of Receipts and Disbursements in Oil Business for Year 1911.*

*In Oil Business for Year 1911.*

Jan. 1 to May 31.

Lot 32.

	Receipts.	Disbursements.
Lot 32, Oil .....	9,304 35	
" 32, Expense .....	10 00	3,264 76
" 32, Supply .....		3,242 39
" 32, Drilling .....		1,221 25
" 32, Bldg. & Rig.....		289 84
" 32, Cleaning .....		445 60
" 32, Torpedo .....		138 00
" 32, Tank .....		16 32
	<hr/>	<hr/>
Royalty, Oil .....	71,276 23	9,314 35
	<hr/>	<hr/>
		1,431 91
		<hr/>
		8,618 16
		<hr/>
		1,431 91

Lot 293.		Receipts.	Disbursements.
Lot 293, Oil .....		1,361 42	
" 293, Expense .....			343 10
" 293, Supply .....			1,783 26
" 293, Bldg. & Rig .....			1,274 35
" 293, Tank .....			141 75
" 293, Torpedo .....			195 50
		1,361 42	3,737 96
Lot 275.			
Lot 275, Oil .....		572 61	
" 275, Supply .....			2 79
		572 61	2 79
General Expense .....			11,516 39
Legal Expense .....			4,803 12
Tax .....			1,209 01
Office Expense .....			1,603 77
Office Rent .....			774 92
Furniture & Fixtures .....			82 85
Horse, Buggy & Harness .....			35 50
General Well .....			101 88
General Rig .....			805 06
			20,932 50
2/3 of this expense chargeable to oil .....			13,955 00
Totals for year 1911 (Jan. 1, to May 31) .....		82,524 61	27,745 82

*Gas Statement.*

Receipts and Disbursements in Gas Business for the Years 1904, 1905, and 1906.

	Receipts.	Disbursements.
Year 1904.....	3,285 57	8,040 93
" 1905.....	18,976 15	27,637 41
" 1906.....	28,639 60	21,735 36

*Expenses of Carrying on Business of Company.*

General Expenses .....	12,331 12	10,165 94	14,403 39
Legal Expenses .....	7,225 00	6,191 66	18,370 09
Tax .....	92 76	84 46	3,337 64
Horse, Buggy & Harness..	322 83	.....	176 50
New York Office.....	.....	.....	957 69
Bartlesville Office Rent...	506 00	465 00	450 00
Furniture & Fixtures.....	193 68	609 45	300 02
	<hr/> 20,671 39	<hr/> 17,516 51	<hr/> 38,995 33

1/3 of which added to the disbursements above will give us statement as follows:

		Loss.
Receipts from sale of Gas, Year 1904....	3,285 57	
Disbursements .....	14,931 39	11,645 82
Receipts from sale of Gas, Year 1905....	18,976 15	
Disbursements .....	33,476 24	14,500 19
Receipts from same of Gas, Year 1906....	28,639 60	
Disbursements .....	34,733 80	6,094 20
		<hr/> 32,240 21

*Exhibit C.**Cost of Gas Wells.*

1905, No. 10, Lot 37.....	\$1,493 90	Exhausted.
1905, " 11, " 37.....	2,099 09	"
1905, " 1, " 59.....	2,459 21	"
1905, " 12, " 37.....	1,693 11	"
1905, " 1, " 160.....	3,010 36	In service.
1905, " 1, " 74.....	3,075 75	" "
1905, " 2, " 172.....	3,693 94	Exhausted.
1906, " 2, 35-26-10.....	3,370 08	Not in Service.
1906, " 1, Lot 173.....	3,944 98	Exhausted.
1906, " 3, " 72.....	2,275 61	"
1906, " 1, 2-25-9.....	4,125 20	Not in Service.
1906, " 3, Lot 69.....	2,505 88	In service.
1906, " 2, " 173.....	2,870 51	Exhausted.
1907, " 3, " 41.....	2,546 90	"
1907, " 3, " 31.....	2,874 42	"
1907, " 4, " 31.....	2,960 60	"

## INDIAN TERRITORY ILLUMINATING OIL COMPANY VS.

1907,	"	2,	"	77.....	2,926	01	In Service.
1907,	"	7,	"	172.....	1,554	30	Exhausted.
1907,	"	5,	"	299.....	<b>3,613</b>	<b>60</b>	<b>In Service.</b>
1908,	"	3,	"	77.....	3,470	00	Not in Service.
1908,	"	6,	"	299.....	3,529	00	In Service.
1908,	"	7,	"	299.....	3,684	89	Not in Service.
1908,	"	4,	"	77.....	3,812	08	In Service.
1909,	"	5,	"	77.....	3,932	63	" "
1909,	NE Cor.	"	202.....	1,561	34	" "	" "
1909,	"	2,	2-26-10.....	3,274	99	Not in service.	
1909,	"	1,	Lot 156.....	3,220	79	" "	" "
1909,	"	1,	2-26-10.....	4,070	15	" "	" "
1909,	"	3,	2-26-10.....	2,161	00	" "	" "
1911,	"	19,	Lot 37.....	1,014	62	Exhausted.	
1911,	"	3,	" 156.....	3,365	33	Not in service.	
1911,	"	28,	" 43.....	5,094	73	" "	" "

95,285 00

## 75 Exhibit D.

Gas well.	Location.	Initial volume.	Volume Jan. 1, 1911.	Original cost.
No. 6	Lot 299.....	14,000,000	6,648,216	\$3,529 00
" 1	" 160.....	6,000,000	3,024,000	3,010 36
" 1	" 74.....	8,000,000	2,160,000	3,075 75
" 4	" 77.....	10,000,000	5,495,524	3,812 08
" 5	" 77.....	17,000,000	5,305,920	3,932 63
" 2	" 77.....	15,000,000	5,495,524	2,926 01
" 3	" 69.....	4,800,000	2,339,280	2,505 88
" 5	" 299.....	15,500,000	6,648,216	3,613 60
			Almost	
NE Cor.	" 202.....	No Gauge;	Exhausted	1,561 34
		90,300,000	37,116,680	\$27,966 65

76	Total Cost of Wells Purchased, as shown by attached list.....	95,285 00
	Maintenance to date.....	13,967 87
	Drilling for Gas by Company, all of which were failures, and represent a total loss, salvage deducted at original cost.....	15,175 83

Total invested in Gas wells, since

January 1, 1905.....	\$124,428 70
Cost of above wells which are exhausted.....	\$31,481 19

Of the ten wells in service showing an initial volume of 90,300,000 cu. ft., on January 1, 1911, show only a volume of 37,116,680 cu. ft., showing a loss from service of, in round numbers, 53,000,000 cu. ft., or more than half, and inasmuch as the static pressure has correspondingly fallen off, I would consider them exhausted to the extent of at least 2/3; the original cost of these wells was \$27,966 55, 2/3 of which is.. \$18,644 37

In addition to the loss of volume in these wells mentioned, all of the wells in the immediate vicinity show a heavy loss in volume, as well as static pressure. There are also 10 wells shown on attached schedule costing \$35,837.16 from which we are receiving no revenue on account of being unavailable for a market we have established and are slowly, of natural consequence, depreciating in volume. It will then be noted that, with the amount of \$124,428.70 invested in wells, \$15,175.83 a loss in the first instance, \$31,481.19 for wells exhausted, and \$18,644.37 for loss of wells in service, we have a total loss of \$65,301.39, which leaves only a net of our original purchase \$65,301.39, \$35,837.16 of which we are unable to realize on at this time.

(Here follows copy of original lease, marked pages 77 and 78.)



OKLAHOMA CITY, OKLA., Aug. 2, 1911.

The State Board of Equalization met at 2 o'clock P. M., August 2, 1911, pursuant to recess, with all members present.

Mr. Meyer: I move that all public service corporations assessed by this Board shall be finally considered to have been assessed as of this date, August 2nd, 1911.

Mr. Cruce: Second the motion.

On roll call the vote was as follows:

Voting aye: Bryan, Cruce, Harrison, Meyer and Taylor.

Voting no: Dunlop. Absent and not voting, West.

That thereafter, and on the 30th day of August, 1911, the following proceedings were had by and before the State Board of Equalization, to-wit:

OKLAHOMA CITY, OKLA., Aug. 30, 1911.

The State Board of Equalization met pursuant to recess at ten o'clock A. M. August 30th, 1911, with the following members present:

Governor Lee Cruce, Chairman,  
Secretary of State Ben F. Harrison, Secy. Pro Tem.,  
State Treasurer Robert Dunlop,

President Board of Agriculture, G. T. Bryan,  
State Examiner and Inspector Charles A. Taylor,  
Attorney General Charles West.

Absent: Auditor Leo Meyer.

Mr. K. C. Crane appeared before the Board representing the Indian Territory Illuminating Oil Company and made a statement relative to the assessment of said company.

Mr. West: I move we reconsider the assessment of the Indian Territory Illuminating Oil Company.

Mr. Taylor: Second motion.

Motion carried, all members present voting aye.

Mr. West: I move we assess the property of the Indian Territory Illuminating Oil Company for the purpose of taxation the sum of \$538,350.

Mr. Taylor: Second the motion. Motion carried, all members present voting aye.

That thereafter, and on the 2d day of October, 1911, the following proceedings were had before said Board relating to the assessment of said Company:

OKLAHOMA CITY, OKLA., Oct. 2, 1911.

The State Board of Equalization met pursuant to recess taken at 2:00 o'clock p. m., all members present with exception of State Examiner and Inspector Chas. A. Taylor, absent, on account of illness.

## Indian Territory Illuminating Oil Company.

Mr. K. C. Crane representing the Indian Territory Illuminating Oil Company appeared before the Board and made a statement relative to the valuation for taxation purposes of the property of said company.

84 In the Supreme Court of the State of Oklahoma.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY ILLUMINATING OIL Co.

I, Leo Meyer, Auditor of the State of Oklahoma, and Ex Officio Secretary of the State Board of Equalization of said State, do hereby certify that the within and foregoing sheets contain a full, true and correct transcript and copy of all reports and returns filed in my office, and all oral and written testimony, exhibits (except Exhibit A at the hearing of June 29, 1911, the same being a part of the record in Case No. 2845 in the Supreme Court of Oklahoma, as herein noted), pleadings and statements filed, heard, introduced or considered before the said Board of Equalization relating to the assessment by said Board of the property of the Indian Territory Illuminating Oil Company for the purpose of taxation in the State of Oklahoma for the fiscal year ending June 30, 1912, and all orders, motions and rulings by said Board thereon.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of my office, this 30th day of October, 1911.

[SEAL.]

LEO MEYER,

*State Auditor, and ex Officio Secretary  
of the State Board of Equalization.*

85 In the Supreme Court of the State of Oklahoma.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY ILLUMINATING OIL COMPANY by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

*Notice of Appeal.*

To Benjamin F. Harrison, Secretary of State of the State of Oklahoma, and Lee Cruce, Governor; Leo Meyer, Auditor, and ex Officio Secretary of said Board; Robert Dunlop, State Treasurer; G. T. Bryan, President Board of Agriculture; Charles A. Taylor, State Examiner and Inspector; Charles West, Attorney General, Comprising the State Board of Equalization of the State of Oklahoma:

You are hereby notified that the Indian Territory Illuminating Oil Company appeals from the assessment and valuation of its prop-

erty for the purpose of taxation in the State of Oklahoma for the fiscal year ending June 30, 1912, as made and fixed by the State Board of Equalization on the 16th day of May, 1911, and modified on the 30th day of August, 1911, and from the action of said Board in failing, neglecting and refusing to correct, modify or reduce said assessment as made on said 30th day of August, 1911; said Board of Equalization being still in session.

You are further notified that as grounds of its appeal from said assessment and valuation, and from the action of said Board of Equalization in failing, neglecting and refusing to correct said assessment, the Indian Territory Illuminating Oil Company alleges and states as follows, to-wit:

86 First. That said company had before the making of said assessment and valuation, and as required by law, filed in the office of the Auditor of the State of Oklahoma its duly verified return of its taxable property, showing the actual fair and true cash value thereof as \$53,835.10; that said sum represents and did represent the actual fair cash value of the taxable property of said company as of the first day of February, 1911; and that the value of said taxable property has not increased since said date, but has rather decreased. And, further, that on the 18th day of April, 1911, said company, by its manager, appeared before said Board of Equalization and introduced evidence in support of the statements made in said return.

Second. That on the sixteenth day of May, 1911, the said Board did arbitrarily and unjustly, and contrary to the evidence before it and to said verified return, and without any information or evidence justifying such action, assess and fix the valuation of the taxable property of said company at \$1,130,535; that thereafter, and on various occasions, the said company, by its attorneys, appeared before said Board and protested against and complained of said assessment as being excessive and unreasonable, and introduced evidence in support of said complaints and protests; said appearances being on, to-wit, the 29th day of June, the 10th day of July, the 17th day of July, the 2d day of August, and the 30th day of August, 1911; that on said 30th day of August, 1911, said Board reconsidered said assessment of May 16, 1911, and assessed the property of said company for the purpose of taxation at \$538,350.00; said assessment being contrary to the return made by said company and to

87 the evidence before said Board, and being \$484,514.90, or nine hundred per cent, in excess of the fair cash value of said property, as set forth in the verified return thereof filed in the office of the Auditor of the State of Oklahoma, and placed by him before said Board; that on the 2d day of October, 1911, said company appeared before said Board, by its attorneys, to protest against and complain of said excessive, unreasonable, arbitrary and erroneous assessment and valuation of its property, but that said Board failed, neglected and refused, and still fails, neglects and refuses, to change, correct or modify said assessment and valuation, and ignored and disregarded, and continues to ignore and disregard, said return and

all of said evidence introduced before it supplementary to and confirmatory of said return.

Third. That said arbitrary, unjust and erroneous action of said Board, in so assessing the valuation of said Company's property for the purpose of taxation in the State of Oklahoma, will, if allowed to stand, greatly and unfairly increase the burden of taxation resting upon said company, and will deprive it of its property without due process of law, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States, and Section 7 of Article II of the Constitution of the State of Oklahoma, and will deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States.

Fourth. The said Indian Territory Illuminating Oil Company further alleges and states that in fixing the assessed valuation of the taxable property of said company the said Board, as it is informed and believes, attempted to place a value upon and to tax the fran-

88      chise, occupation, license, or right of said company to do business; which franchise, license and right the said company possesses and is exercising in the reservation of the Osage Tribe of Indians, the same being Osage County, Oklahoma, under and by virtue of a lease specifically approved by the United States Government, through its Interior Department, as guardian of said Tribe; that said lease with said Tribe was specifically renewed by the United States Government by the Act of March 3, 1905, and was further by said Government recognized in the Osage Allotment Act, being the Act of June 28, 1906; that the territory comprising said Osage Reservation is under the exclusive jurisdiction of the United States in so far as the rights of said Osage Tribe are concerned; that the operations of said company in said territory, under said lease contract so made, approved and recognized, are governed and carried on under rules and regulations promulgated by the Honorable the Secretary of the Interior, as provided in said lease, and that this company is under the direct control of the Government of the United States, exercised by the officers of the said Department; and that any attempt to tax this company's franchise or right to do business and operate under said lease is an attempt to tax a right and franchise granted by the Federal Government, and is illegal and void; and, further, that any attempt to tax this company's operations and right to do business with said Osage Tribe of Indians under said lease is an attempt to impose, and will result in imposing, an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe, contrary to the provisions of Section 8 of Article I of the Constitution of the United States.

Fifth. That said company is not engaged in a public service of any kind, and that said company is not in any sense a public  
89      service corporation, as shown by the evidence presented to said Board; and that said Company is not taxable on the assessment of said Board, and has no property which is subject to assessment and valuation for taxation by said Board, under the laws of the State of Oklahoma.

Sixth. That the small surface gas lines belonging to this company are but a very small part of the business of the company, its business being almost wholly and primarily the production of petroleum or oil; that said lines were built and extended from time to time on the surface of the ground for the sole purpose of conveying gas to producers of oil, in order to develop the said leased territory for oil, and increase the company's profits from its oil interests; that said surface lines were extended to the towns of Avant and Bigheart incidentally, and at the earnest request of the inhabitants of said towns, who were and are principally people working in the oil fields surrounding said towns; and that this company has no franchise rights whatever as a public service corporation in said towns, or either of them, for any purpose; and said company insists that if its service to the people of said towns be adjudged a public service, and this company a public service corporation as to said towns, that still, in no event should any of this company's property be assessed and taxed as employed in a public service, as to said towns, other than the property actually used in serving the consumers in said towns, as shown in the evidence before said Board.

Seventh. That the furnishing of gas by this company to the Ochelata Gas & Water Company and the Bartlesville Gas & Oil Company, as set forth in the evidence before said Board, is not a public service; that the said companies so furnished with gas by this company are themselves public service corporations in the towns of Ochelata and Bartlesville, respectively, by reason of certain franchise rights therein, under which they furnish gas to the domestic consumers in said towns, and are so assessed and taxed; and that it is unfair, unjust and illegal to attempt to assess and tax this company as a public service corporation upon the same business.

Eighth. That the said Board had no right or authority to increase the valuation of the taxable property of the said company for the purpose of taxation, above the valuation thereof as set forth in the verified return thereof duly filed in the office of the State Auditor, without evidence justifying such increase; and that its action in so increasing such valuation, and in failing, neglecting and refusing to modify, reduce and correct such erroneous valuation, ignoring and disregarding the information and evidence before it, was arbitrary, unjust, unreasonable and illegal, and will, if allowed to stand, result in depriving this company of its property without due process of law, and in depriving it of the equal protection of the laws, and will render this company unable to carry out the provisions of, and to carry on and perform the duties imposed upon it by, its said lease and contract with the Osage Tribe of Indians and the United States Government; thereby hindering and obstructing the performance of a contract with the Federal Government, and interfering unduly and illegally with commerce with an Indian Tribe; all contrary to the specific constitutional provisions hereinbefore referred to.

Ninth. That this company is now paying and has heretofore paid

91 all legal taxes upon its business and property in this State, including gross revenue, gross production and ad valorem taxes, and that it has not at any time attempted to avoid the payment of any just or legal tax.

Tenth. That this appeal is taken and this notice is given prior to the final adjournment of the said State Board of Equalization, and within sixty days after the making of said assessment.

And that, for the reasons hereinbefore set forth, the Indian Territory Illuminating Oil Company appeals to the Supreme Court of Oklahoma from the action of the State Board of Equalization in fixing and assessing the valuation of the taxable property of the said company on the 30th day of August, 1911, as hereinbefore set forth, and from the action of said Board in failing, neglecting and refusing to modify, correct or rescind such erroneous assessment; in pursuance and under the authority of an Act of the Legislature of Oklahoma entitled "An act Providing for Appeals from the actions of Board of Equalization," approved March 24, 1910, and Section 15 of an Act of the said Legislature entitled "An Act creating the office of county assessor," etc., approved March 25, 1911; and the said company hereby serves this, its notice of appeal, upon the Secretary of State, as provided in said Statute of 1910, and upon the said Board of Equalization.

THE INDIAN TERRITORY ILLUMINATING  
OIL CO.,

By JOHN H. BRENNAN,  
HARRIS & NOWLIN,  
KENNETH C. CRAIN, *Attorneys.*

92 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

THE STATE OF OKLAHOMA, ss:

I, Leo Meyer, Auditor of the State of Oklahoma, and Ex Officio Secretary of the State Board of Equalization, do hereby acknowledge and accept service of notice of the appeal of the Indian Territory Illuminating Oil Company from the assessment and valuation of its property by the State Board of Equalization of Oklahoma for the purpose of taxation for the fiscal year ending June 30, 1912, and from the action of said Board in failing to modify, correct or reduce such assessment; of which notice the foregoing is a true copy.

Witness my hand, and the seal of my office, this 26th day of October, 1911.

[SEAL.]

LEO MEYER,  
F.,

*State Auditor and ex Officio Secretary of  
the State Board of Equalization.*

93 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

THE STATE OF OKLAHOMA, ss:

I, Benjamin F. Harrison, Secretary of State of the State of Oklahoma, do hereby acknowledge and accept service of notice of appeal of the Indian Territory Illuminating Oil Company from the assessment and valuation of its property by the State Board of Equalization of Oklahoma for the purpose of taxation for the fiscal year ending June 30, 1912, and from the action of said Board in failing to modify, correct or reduce such assessment; of which notice the foregoing is a true copy.

Witness my hand, and the seal of my office, this 26th day of October, 1911.

[SEAL.]

[SEAL.]

BENJAMIN F. HARRISON,  
*Secretary of State.*

94 In the Supreme Court of the State of Oklahoma.

To Hon. Leo Meyer, State Auditor, Oklahoma City, Oklahoma:

For the purpose of use in its appeal from the assessment and valuation of its taxable property for the purpose of taxation for the fiscal year ending June 30, 1912, by the State Board of Equalization, the Indian Territory Illuminating Oil Company respectfully requests that you, as Secretary of said Board, and custodian of its minutes and records, furnish to the said Company a complete record of the returns, evidence, pleadings, exhibits and statements filed, heard, introduced or considered before the said Board or in your office relating to the assessment of the said Indian Territory Illuminating Oil Company, and all orders, motions, rulings and proceedings of the said Board in connection therewith.

INDIAN TERRITORY ILLUMINATING  
OIL CO.,

By JOHN H. BRENNAN,  
HARRIS & NOWLIN,  
KENNETH C. CRAIN,

*Attorneys.*

I hereby acknowledge receipt of a copy of the above request and notice, this 26th day of October, 1911.

LEO MEYER,  
F.,

*State Auditor, ex Officio Secretary State  
Board of Equalization.*



95 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

*Entry of Appearance.*

Now comes the State Board of Equalization of the State of Oklahoma, and the various officers comprising said Board, to-wit, Governor Lee Cruce, State Auditor Leo Meyer, Secretary of State Benjamin F. Harrison, State Treasurer Robert Dunlop, President Board of Agriculture G. T. Bryan, Attorney General Charles West, and State Examiner and Inspector Charles A. Taylor, in response to the notice of appeal served on the Secretary of State and on the State Auditor, Ex Officio Secretary of said Board, by the Indian Territory Illuminating Oil Company, appellant and petitioner herein, as per copy thereof and acknowledgments of service attached to the record herein, and hereby waive issuance and service of summons in error.

CHARLES WEST,  
*Attorney General,*  
By W. C. RIVES,  
*Ass't Atty Gen.*

Oct. 31st, 1911.

(Filed Oct. 3, 1911, W. H. V. Campbell, Clerk.)

Endorsed: # 3240. In the Supreme Court of the State of Oklahoma. In the Matter of the Assessment of the Indian Territory Illuminating Oil Company. Petition and Record of the Indian Territory Illuminating Oil Co. on Appeal. John H. Brennan, Bartlesville, Okla., Harris & Nowlin, Kenneth C. Crain, Oklahoma City, Okla., Attorneys for Petitioner.

96 And thereafter, to wit, on January 9th, 1912, there was made and entered the following order.

Supreme Court, January Term, 1912, January 9th, 1912, First Judicial Day.

# 3240.

INDIAN TER. ILL. OIL CO., Plaintiff in Error,  
vs.  
STATE BD. OF EQUALIZATION, Defendant in Error.

And now on this day the above cause comes on for hearing, and it is ordered by the Court that the stipulation herein that Mr. R. M.

Campbell be appointed referee herein with power to take testimony and report his findings of fact and conclusions of law to this court, be, and the same is hereby allowed.

97 And thereafter, to wit, on March 12th, 1912, there was made and entered the following order.

Supreme Court, March Term, 1912, March 12th, 1912, First Judicial Day.

# 3240.

In re Assessment of Property of Indian Terr. Illuminating Oil Co. for Fiscal Year Ending June 30th, 1912.

And now on this day it is ordered by the Court that the referee in the above entitled cause, be, and he is hereby allowed sixty days additional time in which to make his report.

98 And thereafter, to wit, on May 7th, 1912, there was made and entered the following order.

Supreme Court, March Term, 1912, May 7th, 1912, Sixteenth Judicial Day.

# 3240.

In re Assessment of Property of Indian Territory Illuminating Oil Co., for Fiscal Year Ending June 30, 1912.

And now on this day it is ordered by the Court that the referee in the above entitled cause be given sixty days additional time in which to file report.

99 And thereafter, to wit, on July 18, 1912, there was made and entered the following order.

Supreme Court, July Term, 1912, July 18th, 1912, First Judicial Day.

# 3240.

In the Matter of Assessment Indian Territory Ill. Oil Co.

And now on this day it is ordered by the Court that the motion of the Referee herein asking thirty days additional time in which to file his report herein, be, and the same is hereby allowed.

100 And thereafter, to wit, on August 20, 1912, there was made and entered the following order.

Supreme Court, July, 1912, Term, August 20<sup>th</sup>, 1912, Ninth  
Judicial Day.

# 3240.

In re assessment of Indian Territory Illuminating Oil Co.

And now on this day it is ordered by the court that time for  
referee to make his report in the above entitled cause be, and the  
same is hereby extended until September 1st, 1912.

101 And thereafter, to wit, on September 10, 1912, there was  
made and entered the following order.

Supreme Court, September Term, 1912, September 10<sup>th</sup>, 1912, First  
Judicial Day.

# 3240.

In the Matter of the Indian Territory Illuminating Oil Co.

And now on this day it is ordered by the Court that the Referee  
herein is allowed thirty days additional time in which to make his  
report.

102 And thereafter, to wit, on October 8, 1912, there was made  
and entered the following order.

Supreme Court, September Term, 1912, October 8, 1912, Fifteenth  
Judicial Day.

# 3240.

In re Assessment Ind. Ter. Illuminating Oil Co.

And now on this day it is ordered by the court that the referee  
herein be given until October 12th, 1912, to file his report.

103 Filed Oct. 12, 1912. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the Assessment of the Indian Territory Illuminating  
Oil Company.

*Report of Referee.*

To the Honorable Supreme Court of the State of Oklahoma:

The cause above entitled is an appeal from the assessment made  
by the State Board of Equalization of the State of Oklahoma, of the

taxable property of the Indian Territory Illuminating Oil Company for the year 1911.

By order of the Court duly entered, I was appointed Referee and was directed as such, to report my findings of fact and conclusions of law to the Court. This appointment was made in January, 1912, and after taking the oath of office I heard the evidence offered by the Indian Territory Illuminating Oil Company, in the month of March, 1912, at which time said Indian Territory Illuminating Oil Company and the State of Oklahoma, appeared before me by their respective attorneys. The time allowed by the original order in which the report of the Referee should have been filed, has been extended by the Court, and I now beg leave, in accordance with the order of appointment, to submit the following findings of fact and conclusions of law as arrived at by me after a consideration of the evidence and of the transcript of the proceedings had before the State Board of Equalization. Before said Board certain evidence was offered and certain statements were made and certain documents were filed by the Indian Territory Illuminating Oil Company, and these have all been considered by me, together with such additional documents, statements and arguments of counsel as the respective parties to the litigation have seen fit to offer.

### *Findings of Fact.*

From the evidence I find the following facts:

#### I.

The Indian Territory Illuminating Oil Company is a corporation, organized under and by virtue of the laws of the State of New Jersey, with a capital stock of \$3,500,000.00.

#### II.

On the 16th day of March, 1896, the Osage Nation of Indians in Oklahoma Territory, entered into a contract with one Edwin B. Foster, by the terms of which said Edwin B. Foster had a blanket lease upon the lands in Oklahoma Territory, known as the Osage Indian Reservation, for the sole purpose of prospecting and drilling wells and mining and producing petroleum and natural gas only. This lease covered a period of ten years from its date and was approved by the Secretary of Interior. Under an Act dated March 3, 1905, this lease was extended as to 680,000 acres of said reservation for a period of ten years from the date of its original expiration, and by the terms of said extension said lease will expire on the 16th day of March, 1916. Prior to the act of March 3, 1905, by which said lease was extended, the same had been acquired by and assigned to the Indian Territory Illuminating Oil Company.

#### 105

#### III.

The Indian Territory Illuminating Oil Company has sub-leased to something more than one hundred persons and corporations, most

of the lands covered by said lease contract as extended on March 3, 1905, and oil operations on said lands have been and are being conducted largely by such sub-leases.

## IV.

A small portion of the tract, the amount of which does not appear from the evidence, is operated by the parent company direct.

## V.

By the terms of the lease contract with the Osage Tribe of Indians, as extended by Act of March 3, 1905, the sub-lessees are required to pay a royalty of one-sixth of the oil produced upon the property covered by the lease, of which amount  $1/24$  goes to the parent company and  $3/24$  or  $1/8$  to the Osage Indians, the payments on behalf of the Indians being made to the United States Indian Agency for the Osages, at Pawhuska, Oklahoma, under and by virtue of certain rules and regulations governing the leasing of said lands, promulgated by the Department of the Interior.

## VI.

The Indian Territory Illuminating Oil Company has laid pipe lines upon and across the land covered by said lease, for conveying natural gas, and during the period of its operations it has been the practice of said company to furnish natural gas to the sub-lessees for use as fuel in their drilling and pumping operations at a flat rate, the amount of which is not disclosed by the evidence.

## VII.

The Indian Territory Illuminating Oil Company, during the year 1911, and prior thereto, furnished natural gas for domestic consumption to the citizens and residents of the towns of Bigheart and Avant, two small towns located in the Osage Nation, adjacent to the pipe lines of said Company. It was also during said year and prior thereto, furnishing some gas to a local corporation in the City of Bartlesville, which held a franchise for and was engaged in the business of selling gas to the residents and citizens of that city, and the same was true at the town of Ochelata, where the local distributing company was furnished certain quantities of gas for use in its business in selling gas to the inhabitants of that place.

## VIII.

The Indian Territory Illuminating Oil Company had no local franchises at either Bigheart or Avant, for the distribution of gas, and was not engaged in the distribution and sale of gas to the citizens and residents of the other places mentioned.

## IX.

By the terms of its contract with the Osage Indians, the Indian Territory Illuminating Oil Company, was required to furnish gas



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107 free to the Osage citizens and for use in the public institutions of the Osages, under certain conditions named.

## X.

Said Company has been and is primarily engaged in the business of Oil production in the territory covered by said lease with the Osage Indians, and has conducted its operations in the gas business as an incident to the development of the oil territory and the production of oil, and, to some extent, as a matter of accommodation to the citizens of Bigheart and Avant, and other persons residing along its pipe lines.

## XI.

Said Company made a sworn return to the State Board of Equalization for the year 1911, of \$53,835.10, as the actual fair cash value of that part of its property engaged in the public service, by reason of the gas business transacted by the Company. This valuation was raised by the State Board of Equalization to \$538,350.00, by action of the Board on the 30th day of August, 1911.

## XII.

Said Company returned its property to the local assessors of Osage and Washington Counties, for the year 1911, at \$52,830.02, at which the same was assessed.

## XIII.

All the property owned by said Company and used in the conduct of its business is located in Osage and Washington Counties, Oklahoma, and all its business operations are conducted in said State.

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## XIV.

The total value of said Company's stock, including all its property, tangible and intangible, on the first day of February, 1911, was \$500,000.00.

## XV.

The amounts returned by said Company to the local assessors of Osage and Washington Counties, and to the State Board of Equalization, do not include the lease, sub-leases, contracts and franchises of the Company, but only its physical properties, such as pipes, pipe lines and accessories, furniture, cash, account and bills receivable, it being contended by said Company that its lease, sub-leases, contracts and franchises are not subject to taxation by the State of Oklahoma.

## XVI.

The total value of the Indian Territory Illuminating Oil Company's property of every kind located in Oklahoma, over and above the amount locally assessed, was \$447,169.98, on February 1, 1911.



## XVII.

The gas business, as heretofore conducted by said Company, has not been, of itself, profitable, but it has been and is valuable as an adjunct to the Company's oil operations.

*Conclusions of Law.*

109 I beg leave to report the following conclusions of law in this case, based upon the findings of fact as above set forth and stated.

## I.

The Indian Territory Illuminating Oil Company is liable for taxation by the State of Oklahoma, for the full value of its property, tangible and intangible,—that is, for the sum of \$500,000.00.

## II.

I conclude that the Indian Territory Illuminating Oil Company is not exempt from taxation upon the theory that it is a Federal agent or that it holds a franchise from the Federal Government, but that the Act of Congress under which the contract with the Osage Indians was authorized and extended to the 16th day of March, 1916, was not entered into for the purpose of using said Indian Territory Illuminating Oil Company, as a Federal agent, or in the discharge of any governmental duty or function. In my opinion, the Act of Congress did not enlarge in any way, or in any way affect the powers of the Indian Territory Illuminating Oil Company, to make a contract. It was free to do that at any time, but this Act of Congress simply made the Osage Tribe of Indians eligible to enter into a contract on their part. The purpose of the Government was to see to it that said tribe of Indians was fairly dealt with and properly treated. They were allowed, with the supervision, and subject to the approval, of the Government, to make the contract for themselves. It was their contract, not the government's.

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## III.

Said Company in the transaction of its business in Oklahoma, is a public service corporation on account of the nature of the gas business transacted by it, and by submitting its report to the State Board of Equalization as a public service corporation, and admitting to that Board its liability to be assessed for taxation, by said Board, is estopped to deny that it is engaged in the public service.

## IV.

That part of the property of said Company which is used in the production of oil and in the oil business, is not engaged in the public service, but the two kinds of business transacted by said Company, one dealing with oil and the other with gas, are so closely intermingled that it is impossible to say just what part of the total valua-

tion of the Company should be assessed by the State Board of Equalization as engaged in the public service and what part should be assessed by the local assessors of the counties in which the property of the Company is located.

## V.

It is immaterial so far as the amount of taxes that must be paid is concerned, or the manner of the payment of the taxes, or the time in which said taxes must be paid, whether the assessment of said Company is made by the State Board of Equalization or by the County Boards of the counties in which its property is located.

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## VI.

Said County Boards of Assessors, upon the report of said Company having assessed its property in those counties connected with the oil business, at \$52,830.02, and that assessment having become final, it is fair and just that the remaining property of the Company should be assessed at the sum of \$447,169.98, said sum being the difference between the total valuation of the Company's property and the amount returned to the local assessors of Osage and Washington Counties.

I recommend that a judgment be entered fixing the assessment upon the Indian Territory Illuminating Oil Company's property, for taxation for the year 1911, at said sum of \$447,169.98.

I have not kept an accurate account of time spent in the consideration of this case, but I have spent more than ten days' time in the hearing and consideration of the evidence, records, argument of counsel, and in the investigation of authorities connected with its determination, and I respectfully request the Court to make such order for my compensation as may be fair, all of which is respectfully submitted.

I return herewith a transcript of all the evidence taken before me as Referee in this case, and request that the same be considered as a part of this report.

R. M. CAMPBELL, *Referee*.

Endorsed: No. 3240. In the Matter of the Assessment of Indian Territory Illuminating Oil Company. Report of Referee.

112 In the Supreme Court of the State of Oklahoma.

Filed Oct. 12, 1912. W. H. L. Campbell, Clerk.

*Filed Oct. 12, 1912. W. H. L. Campbell, Clerk.*

No. 3240.

In the Matter of the Assessment of the INDIAN TERRITORY  
ILLUMINATING OIL COMPANY.

*Oath of Referee.*

I, R. M. Campbell, of lawful age, being first duly sworn, on oath say: That I will support and defend the constitution of the United States and of the State of Oklahoma, and that I will faithfully and impartially perform the duties of referee in the above entitled cause, according to law, to the best of my ability, so help me God.

R. M. CAMPBELL.

Subscribed and sworn to before me this 23d day of March, 1912.

[SEAL.]

E. E. GIBBENS,

*Notary Public.*

My commission expires July 24, 1915.

113 In the Supreme Court of the State of Oklahoma.

No. —.

In the Matter of the Assessment of the INDIAN TERRITORY ILLUMINATING OIL COMPANY.

The appellant appeared by John H. Brennan, its attorney, and the State of Oklahoma, appeared by W. C. Reeves, Assistant Attorney General.

And thereupon, the following proceedings were had in office of R. M. Campbell, referee, in Oklahoma City, Oklahoma, on the 23d day of March, 1912.

C. F. LEACH, of lawful age, being duly sworn as a witness on behalf of the appellant, testified as follows:

Direct examination.

By Mr. Brennan:

Q. Mr. Leach, you are a resident of Bartlesville, Oklahoma?

A. I am.

Q. You are general manager of the Indian Territory Illuminating Oil Company?

A. I am.

Q. Was your attention called to a demand or request made by the office of the attorney general for further information?

A. I was.

Q. State, whether this paper I show you, and which we will call "Exhibit Number 1" for identification only, whether that is a summary or memorandum of your property that is assessed, and of taxes paid ad valorem?

114 A. That—this memorandum shows the value of property as returned to the State, or to the County Assessors, in Washington and Osage Counties for the year of 1911, and also the value of property returned to the State Auditor for Osage and Washington County, and also the gross production tax paid, and the yearly gross revenue tax, or matters only assessable against Pipe line companies.

Q. Which you paid, these taxes for 1911, on that amount?

A. The taxes have not been paid, except in Washington County, in Bartlesville of Washington County.

Q. Can you state what the amount of the tax is in Osage County?

A. I cannot.

Q. Can you state whether that tax or assessment, as it appears on the rolls in Osage County, is in any way connected from the books of Osage County?

Mr. Brennan: I show you "Exhibit Number 2."

A. That is a statement, as furnished to me, by the assessor, by the treasurer, County treasurer, of the amount as extended on his rolls, and as returned to him from the Board of Equalization, but does not include the amount as was returned by the Company to the County assessor.

Mr. Brennan: I show you "Exhibit Number 3."

Q. And, state whether that is a statement of the entry made on the rolls in Washington County?

A. It is.

Q. Of the return, on the instructions from the State Board?

A. Yes, that is the property returned in Bartlesville City.

Q. What is "Exhibit Number 4?"

115 Q. State whether that is a general levy and description of the property returned, and exact description of the personal property of the company?

A. It is. Of that as returned in Osage County.

Q. I refer you to "Exhibit Number 5," do you know what that is?

A. That is as returned in Bartlesville City.

Q. Now, tersely describe "Exhibit- 7 to 17" inclusive?

A. They are the returns or copies of the returns, as was returned to the County of Osage and Washington County.

Q. Will you state generally, now, whether "Exhibits 4 and 5" is a resume of the others?

A. It is. Number 4 is a resume of 7 to 17 inclusive, number 5 is **independent.**

Q. Now, just tersely, what is the total value of all the property as returned?

A. One Hundred Six Thousand Six Hundred Sixty-five Dollars and twelve cents.

Q. That doesn't cover the property on which the gross income tax is paid?

A. No. That doesn't include the property upon which gross revenue was paid.

Q. Now, it does not include either a description of the property returned to the State Board, in your return to the State Board? That doesn't include the property you return to the State Board?

A. Yes.

Q. Same property?

A. Yes, sir, same property.

116 Q. Did you return it to the County too?

A. No, the property, as returned to the State Board amounted to \$53,835.10. The property returned to the County Assessors amounted to \$52,830.02.

Q. It is all different property?

A. Different properties.

Q. This \$106,000, item then, covers the gross value of both properties that were returned to Osage County and Washington County?

A. Yes sir.

Q. Now, the greater part of the property of the Indian Territory Illuminating Oil Company, is your royalty property, isn't it?

A. Yes sir.

Q. What part of your acreage does the company own itself, and operate, outside of the property that is subleased to some other person, and from which you get royalties?

A. We are producing oil from four different properties.

Q. Well, about how much acreage is there in the four different properties?

A. Three to four thousand acres. However, that would include probably seventy-five per cent that we don't know whether it would produce oil or not, seventy-five per cent of that amount would be—

Q. You mean seventy-five per cent of the three or four thousand acres?

A. Yes.

Q. And when you say three or four thousand acres, you refer to the total acreage in the particular leases that you own?

A. The particular lot or block number.

Q. Now, these lots, you refer to the particular lot or block, or lease, that you own?

117 A. Yes sir, and operate.

Q. Now, some of these lots contain twelve hundred acres, do they not?

A. Not that we are operating, the largest is about eleven hundred acres.

Q. They are about three miles long, and a half mile wide?

A. Yes sir, one of them is nearly three and one-half miles long.

Q. Now, this three or four thousand acres then, seventy-five per cent of which is not drilled, is the total operated by the company, that is, outside of the acreage from which production is obtained?

A. Yes, sir, for oil. (Question for the books.)

Q. The receipts of the company, as far as oil is concerned, outside of that three or four thousand acres, is from the royalty of 1/24 reserved to the company from about one hundred and twelve sublessees?

A. It is.

Q. And then, besides that, you have the receipts from this gas business?

A. Yes sir.

Q. Now, do you have any method of entering the values of properties on your books, so as to make trial balances in the usual acceptance of that phrase among bookkeepers?

A. No sir.

Q. Do you enter the values of properties at all, upon your books?

A. We do not.

Q. You have a one-sixth royalty, as a general thing, from all the sublessees?

A. Yes, sir.

— One-eighth is paid to the Osage tribe of Indians, is it not?

118 A. That is correct.

Q. Now, is it not a fact, that you never get the one-sixth, but that a division of it is entered into with the pipe line company, so that the pipe line company does pay the Indian one-eighth.

A. Yes.

Q. So that with reference to all your property so subleased, you have no control, of the books, and nothing to do with the collection of the royalty which you are paid one-twenty-fourth (1/24) by the pipe line company, direct over to you?

A. That is correct.

Q. And, as far as that part of the business is concerned, it is merely the receipt of the one-twenty-fourth?

A. Yes, sir.

Q. Now, Mr. Leach, do you make statements every year to the stockholders?

A. Yes, sir.

Q. What do you call that?

A. Well, that is a trial balance, but it only refers to, and contains statements of receipts and expenditures, liabilities and bills receivable and bills payable; no values of property is taken into account, only accounts and cash disbursements.

Q. How long is your lease to run yet?

A. Four years from the 16th day of March this year; expires March 16, 1916.

Mr. Brennan: Now, I offer these different exhibits in evidence, formally, for the purpose of giving Mr. Reeves a chance to examine;—that I have covered the ground.

Mr. Campbell: Exhibits 1 to 17" inclusive, as referred to are admitted as a part of the record.

## Cross-examination.

119 By Mr. Reeves:

Q. What is the Indian Territory Illuminating Oil Company, a corporation?

A. A corporation.

Q. Under what law is it organized?

A. New Jersey.

Q. What is the capitalization of that corporation?

A. Three Million Five Hundred Thousand Dollars.

Q. Has all the stock been issued?

A. I couldn't say, but my impression, yes sir, that is my understanding.

Q. Does the company own, what is called a blanket lease, upon the entire Osage nation?

A. No sir.

Q. What proportion of the Osage nation?

A. Six Hundred Thirty Thousand acres.

Q. And part of that is subleased to one hundred and twelve sublessees?

A. Well I couldn't say positively, but in the neighborhood.

Q. And the balance of the acreage, you operate yourself?

A. Yes sir.

Q. Does the company own any property other than this lease in the Osage Nation, and the oil properties thereon, anywhere else?

A. Not that I know of, no sir.

Q. What is the property it owns in Washington County?

A. Something like six miles of these pipe lines, I don't remember what it is, whatever the returns show in Washington County.

Q. Part of your business is selling gas to consumers, and the other branch of your business is producing oil, is it not?

A. Well, you might so interpret it.

120 Q. And you produce oil directly, and also through your sublessees, do you not?

A. Yes sir.

Q. Now, in your statements to your stockholders, or upon the books of your company, what valuation do you place upon this whole property?

A. None.

Q. Has it never been appraised, or assessed?

A. Not to my knowledge. There may have been estimates made by various members of the company, but there is no record, for the reason that you don't know what the value is, there is no value; because if it did not produce oil, it is not worth anything, and you don't know whether it will produce oil. There is only a very limited amount of it that is tested, and you couldn't place a value upon it, for the simple reason; for the reason, if there was a value on the right to produce, you couldn't tell what that right would be a month from now.

Mr. Campbell: As I understand Mr. Leach, you don't carry in your books, any values of these several properties, as an asset or liability?



A. No sir.

Q. And you never pretend to carry on your books, any statement of valuation on this property?

A. No except one lease only. It was a lease that we purchased and gave Three Thousand Dollars for, and that was carried with Three Thousand Dollars for the lease, and the reason of that was, because it was a purchase outright in about 1910.

Q. That was not a part of this blanket Osage Lease you speak of?

A. It was at one time, but had been bought back. I will state that the price placed upon it, was more upon the value of the property, the tangible property, there had been three or  
121 four wells drilled on it.

Examination by Mr. Reeves:

Q. Now, this revenue from your sublessees, which is represented by one-twelfth interest, that is what you might term net profit, is it not?

A. No, sir, not net profit.

Q. What is there, in the way of charges incident to that properties?

A. Well, I keep, we keep one clerk almost exclusively, whose duty it is to check that up in the office, there is a certain amount of supervision. If we had no properties, we would have to maintain an office force almost as large as we have. We would have to maintain the office of the company, and almost all of the expense we now incur. For a number of years, the company only had a very limited amount of properties—their expenses were almost as much as they are now, and I would like to correct this in the statement of the one-twenty-fourth, I would like to state that about one hundred and fifty-five thousand acres of this six hundred and eighty thousand acres we have only the one-fortieth.

Q. Now, what are these subleases producing in the way of royalty, in dollars and cents.

A. Well—you have it there in that statement.

Q. Does this statement also contain the amount of production of the company per year?

A. Yes sir, yes sir, as near as practical or necessary, to arrive at approximately the expenditures and receipts.

Q. How long have you been in the oil business, Mr. Leach?

A. I think it was in 1905, that I went to work for the government, in charge of oil and gas operations on the Osage reservation,  
122 and resigned that work in 1909, and took a position with this company.

Q. Are you familiar with the value of oil properties in Osage and Washington counties, in this State?

A. Well, I don't know hardly how to answer that. I believe I would know well enough what I would want to give for a property, but I don't know as I would want to place myself up as an expert on valuation, for the reason that I have had nothing to do with buying and selling.

Q. When did the company acquire this property?

A. March 16, 1896.

Q. When was the Indian Territory Illuminating Oil Company organized?

A. In 1902.

Q. When did it take over the property which is involved in this litigation?

A. Well, I couldn't answer that positively, for the simple reason that I was not connected with the company, but it was organized for the purpose of taking it over, and took it over as soon as it was consistent with such matters.

Q. Did it purchase it or acquire it in some other way?

A. I have no knowledge on that.

Q. I am not positive yet, Mr. Leach, that I understand just what property has been actually assessed for taxation, belonging to your company, in Washington and Osage Counties?

A. Well, I think I can make that clear to you. We returned to the board of equalization, all of our pipe lines and fittings connected with the operation of same. We returned to the County assessors,—County authorities, all other properties. I will also say, that in Washington County, we had properties, except such as was  
123 returned to the board of equalization, except in the city of Bartlesville, where we returned our gas and office fixtures, and such things.

Q. That aggregated the amount set forth in your "Exhibit 1" did it not, which shows Fifty-two Thousand Eight Hundred Thirty Dollars and two cents (\$52,830.02)?

A. Yes sir.

Q. And the balance of your property, you undertook to return to the State Board of Equalization?

A. Yes sir.

Q. Which amounted to Fifty-three Thousand Eight Hundred Thirty-four and 10/100 Dollars?

A. Yes sir.

Q. Then, according to your contention, the property of the company, including its leasehold interest, should only be placed, for taxation, at One Hundred Six Thousand Six Hundred Sixty-five and 12/100 Dollars?

A. Yes, sir.

(Statement by Mr. Brennan:) The witness is a layman. The property of the I. T. I. O. Company, and all of it, that you are seeming to tax in this proceeding, like any other oil company is paying its just proportion of taxes, in addition to this One Hundred Six Thousand Dollars?

Q. Do you refer to this gross revenue tax?

A. Yes sir.

JOHN H. BRENNAN, of lawful age, being duly sworn as a witness on behalf of the appellant testified, as follows:

Examination by Mr. Brennan:

Q. What is your name?

A. John H. Brennan.

Q. When did you first become connected with the business of the Indian Territory Illuminating Oil Company?

124 A. In 1902. I was retained to liquidate the stock or property of the company of the old stockholders and old owners, from certain people in New York, known as the promoters, by action commenced in New Jersey, Oklahoma and Indian Territory. I was then residing in Wisconsin. All stock, except about one hundred thousand shares, was in the hands of the Corporation Trust Company, of New York, as trustee under a promoters' agreement, and the promoters were in possession of the estate, and taking its revenues. The legal proceedings resulted in our settling with the promoters, and personally, I decided to distribute the stock among the old stockholders, and keep the new corporation, namely, the Indian Territory Illuminating Oil Company, intact, because some of its stock has been sold to bona fide purchasers for value, and should be respected—I think about seventy-five thousand shares. I commenced in April, 1903, to distribute the stock, and ascertain the old stockholders from time to time, and I think it was concluded sometime in 1904. There was some cross litigation with reference to the title and ownership, and interest of old stockholders, with which I was personally unacquainted. The title to the lease had been transferred to the new company, organized by the promoters, namely, the Indian Territory Illuminating Oil Company, and therefore, when I took down the stock and distributed it to the old stockholders, whose names I can give, if necessary, which represented, in my mind, the proper way of doing the business. There was no estimate of the value, or no money paid in. The fact is, at the time of the distribution, the lease had only two years to run; it expired March 16, 1906, and I was retained in the matter of renewal, which occurred on March 3, 1905, one year prior to the expiration.

125 Of course, the stock and property had very little value prior to that time. There was no development on the property to any great amount, and no producers were struck until July 22, 1904, no—June 22, 1904, when the first well, when the first well in the Ochelata pool. I lived,—resided, in Wisconsin, was practicing law there, and continued so to do, but was connected with the company, down to January 21, 1908.

Examination by Mr. Reeves:

Q. I believe you testified before the State Board of Equalization, did you not, Mr. Brennan?

A. Yes sir.

Q. And in that testimony, you gave what you thought was the value of this property?

A. The whole property?

Q. Yes sir.

A. Well, I estimated it at Five Hundred Thousand Dollars, but I particularly emphasized the fact that I couldn't float a bond issue for Three Hundred Thousand Dollars. I went into the markets of the world, and finally had to put it up as collateral security for the debts of the company, which amounted to One Hundred Eighty-five Thousand Dollars. Well, I did estimate it at \$500,000.00, which does include the whole property including all the oil production and oil properties. It includes the lease, stock in the company and the good will and franchise of the company and includes the right to do business in the Osage Reservation, as it is now being conducted. In another form it would mean to transfer all of the stock of the company with the governmental consent and acquiescence. In this connection I gave the facts and we furnished all the figures. I particularly emphasized the fact that I could not float a bond issue for \$300,000.00. I went into the markets and finally had to put the bonds up as collateral for the debts of the company, which amounted to \$185,000.00. Our short term of lease was the main trouble. The mortgage and bonds covered the whole business, the lease and the license to do business as well as the property. Since I gave the above figures at the former hearing before the State Board of Equalization, eight months have passed and the time for the ending of the lease is so much nearer.

Q. Is the company considered a valuable oil property at this time?

A. Well, now, that is a glittering generality—yes sir, it is glittering. The stock—I cannot answer that, except that we have not got any market for our stock.

Q. Does the company produce large revenues, large dividends?

A. No, that is the trouble with it, it has produced a dividend of one per cent a year through a period of nine years—a period of eight years.

126 Q. That is on the capitalization of Three Million Five Hundred Thousand Dollars?

A. Yes sir.

Q. Does the territory covered by these leases owned by the company, include that portion of Osage County, which you tell about, which we term the Osage pool?

A. Yes sir; there is one section, 19, in the Osage pool, on which we have no royalties, the best one there.

Q. How does that happen?

A. Well, there was only one-eighth royalty reserved on that splendid property before the renewal act, and our total royalty was cut down by the renewal act, so it left nothing for us after the Indians' one-eighth.

Q. The Indian nation gets one-eighth of the production?

A. Yes sir.

Q. And then, you get what you can get above that from your subleases?

A. Yes sir. It wouldn't matter to me, if we got royalty from all of it. It is the sublessees which kept the profits from the oil,

not our office. I would rather have a small part of a sublessee's property in the Osage, than any interest in the parent company. Some of our sublessee companies are worth a great deal of money. One, I think, is worth Seven Million Dollars, and they do not pay one-third of the taxes we had assessed against us by the assessment board. That company is the Barnsdale Oil Company; another company is the subsidiary of the Standard Company, namely, the Prairie Oil & Gas Company, and I might mention a number of others.

Q. They operate under subleases from your company?

A. They operate under subleases from our company, which are owned absolutely by them, and are approved by the Secretary separate from us, and they have all the working interest. And  
127 their taxes state that they are on their gross receipts, together with taxes on their visible personal property, the same as returned by us, and so, that is the same as it is with all the oil companies in the Cherokee, or in the Osage.

Examination by Mr. Brennan himself:

Q. Did you testify before the Board on a former occasion?

A. Yes sir.

Q. Was there any question about separating the accounts and valuations of the gas business from the oil business?

A. No, but we had no figures before us at that hearing as to the production and receipts from the oil business, and we so told the board, and we were requested and permitted to file statements as to the cost and expense of the production of the oil, and the receipts therefrom, separate and distinct from the cost of the production of the gas and the receipts therefrom, which were subsequently filed, and which I ask the referee and Mr. Reeves, to understand and agree that it is not the tax in this case.

Q. Are you acquainted with the extension of the gas lines, these small surface lines, from the very beginning?

A. Yes.

Q. State what were about the extent of the subleases, held by the different sublessees?

A. They were then, and always have been from three, four, or five miles, to ten, fifteen and twenty miles in extent.

Q. How much does it cost to extend a small line over the surface, a mile, to a producing well, or well to be drilled?

A. About Eleven Hundred Dollars a mile.

Q. Does your company do it in all instances?

A. No. It depended upon the distance and on the agreements between the parties, and as to whether it was feasible or not, to extend a line a certain distance, to assist in the drilling of a well, and a sublessee did not expect it on his part, except as agreed  
128 to by the parent company.

Q. Do you have those surface lines over the whole reservation?

A. No, they were extended almost accidentally in the first instance, and from time to time, and the greater part of the produc-

tion now has no surface line; they carry their own operations on with their own gas, or gas from sources other than us.

Q. Did the parent company hold itself out at any time, as being in the business of furnishing gas to sublessees?

A. No.

Q. Is the town of Avant incorporated?

A. No.

Q. Have you any franchise there?

A. No.

Q. Have you any franchise at Bigheart?

A. No.

Q. Is the town of Bigheart incorporated?

A. I think it is, probably, but we have no franchise there.

Q. What is the size of the surface line you refer to?

A. The size of the line I refer to at Eleven Hundred Dollars a mile, was a three inch line.

Q. Is that the line ordinarily used in conveying gas to these operators' wells?

A. Over the surface. These surface lines are not permanent, they are changeable.

Q. How did you happen to put a line into the people living at Avant?

A. By strong pressure from them, and with no promise or agreement on our part to continue the same. The gas business and the oil business, in our office, is kept entirely separate;  
129 easily shown and easily ascertained.

#### Examination by Mr. Reeves:

Q. Are there any of the stockholders of the Indian Territory Illuminating Oil Company, who own stock in these subleases?

A. Yes.

Q. Then you have what is known as an inter-corporate relation existing between the parent company and the lessees?

A. No: They do not follow, from my answer, in the slightest degree?

Q. Who are the stockholders of the Indian Territory Illuminating Oil Company?

A. John H. Brennan, H. V. Foster, M. F. Stillwell, D. Frost, Wisconsin; T. N. Barnsdale, of Pittsburg; Mechanics Savings Bank of Westover, Rhode Island, a bank in liquidation that first put the money into this field, and went into it themselves upon account of it. We carried them two hundred thousand shares out of that litigation in 1902, giving them two hundred thousand shares, and they have had it ever since.

Q. Take the stock of Mr. Barnsdale, for instance, he is also a lessee in the company, is he not?

A. He is, he has got one or two small places and is——

Q. And he is also a stockholder, is he not?

A. In the Barnsdale Oil Company? Yes sir.

Q. Then the stockholders, after all, get the benefit of these subleases?

A. They do not. There is about eighty stockholders. There is a few instances, independent propositions entirely.

Mr. Reeves: I think that is all Mr. Brennan.

Examination by Mr. Brennan:

Q. Do you know about how many of the stockholders of  
130 the Indian Territory Illuminating Oil Company, are stockholders in the companies, which are sublessees under that company, or hold individual leases in their own names?

A. Yes sir.

Q. About how many of the total number of stockholders are interested, either as stockholders in the sublessee companies, or hold individual subleases?

A. I should say offhand, about ten.

Examination by Mr. Reeves:

Q. What proportion of the capital stock of the company do these ten control?

A. I couldn't say.

Q. The major portion of it, or less than one-half?

A. I couldn't say that, Mr. Reeves.

Examination by Mr. Brennan himself:

Q. Is it a fact, that any stockholder in any subcompany, ever suggest in the deliberations or business of the Indian Territory Illuminating Oil Company, as controlling or influencing?

A. No. Our business with the Barnsdale Oil Company is at arm's-length, particularly with reference to litigation and all matters and business between us. I don't believe that any lessee gets that. In fact, I know it. I am not only attorney for the company, but have to do with its business, that is one-half of my work, the transaction of its business. A policy of any other kind couldn't be pursued in this case. The property of a stranger might be the most valuable for the parent company to develop.

Q. It is the policy of the parent company to attempt to develop its leases, by subletting it, or by its own operations, in the lines that will increase its revenue?

A. Yes sir. The Indian Territory Illuminating Oil Company has in addition to the subleasing business to which your attention  
131 the subleased property, by which the parent company may go on the subleased property, and drill wells and develop the same, giving the well to the sublessee, if it is oil, and reserving it to the parent company if it is gas.

Examination by Mr. Reeves:

Q. You retain the gas secured then?

A. We retain the gas, and our business in that respect during the last two years has resulted in a disastrous loss, drilling ten wells



without getting a foot of gas. We have been unable to pipe gas to Bartlesville, the last ten years, in any very large amount. Mr. Leach can give you the exact description of the gas business, and the depreciation of the wells, even when cased in. The gas depreciates, and is lost by reason of oil operations in the same sand.

Mr. LEACH recalled by the Appellant.

Examination by Mr. Brennan:

Q. When you were on the stand before, in this business, you didn't have before you the figures as to the oil business, and the other business of the company?

A. No sir.

Q. After that, you obtained the same from the books and sent them to the Commission?

A. I did, yes sir.

Q. What would you say as to the value of the Avant plant, as a plant, and the value of the Bigheart plant, as a gas plant?

A. Well, the Avant plant, on account of its character, size of lines, etc., I shouldn't consider to be worth more than, not over Two Thousand Dollars to Twenty-five Hundred Dollars. The Bigheart plant probably might be sold on the market for probably Six

132      Thousand Dollars, not that that would take into account the good will and the business, not the cost, but the cost and the good will of the business, I would say Seven Thousand Dollars at the outside.

The Indian Territory Illuminating Oil Company introduced in evidence the Act of Congress of March 3, 1905, renewing the so called Foster Lease and the Act of Congress of June 28th, 1906, known as the Allotment Bill and the Act of Congress of February 1891 under which the lease was first made as appears from the U. S. Stat. at Large.

Said Appellant also introduced before the Referee the Map now a part of the record in case No. 2845, and being the same map introduced before the State Board of Equalization on June 29, 1911, and referred to as an exhibit in this cause in the record by said Board.

133      *Memorandum of Tax Return for 1911.*

The Indian Territory Illuminating Oil Company returned to the County Assessors a total of . . . . . \$52,830.02

Divided as follows:

Washington County . . . . .	\$22,874.00	
Osage County . . . . .	29,956.02	
	<hr/>	\$52,830.02

In addition to the . . . . . \$53,835.10

which was returned to the State Auditor,

Divided as follows:

Osage County .....	\$51,025.10
Washington County .....	2,810.00
	<hr/> \$53,831.10

Total value of all property as returned.....\$106,665.12

The Indian Territory Illuminating Oil Company also paid gross revenue tax as follows:

Gross Revenue on oil and gas, tax payable quarterly..	\$1,653.68
Yearly gross revenue on gas only, annual tax on pipe line .....	231.01
	<hr/>

Making a total of.....\$1,855.69

which is in addition to ad valorem taxes above noted as return.

It will be noted that the State levy was 2 mills for 1911 and that the taxes paid by the Indian Territory Illuminating Oil Company as annual gross revenue equals a small fraction over 3 mills on the original cost of the line as appears in the "Record," besides the tax which may be due on advalorem basis and the tax paid by the Indian Territory Illuminating Oil Company on its gas production as gross production tax equals  $9\frac{2}{3}$  mills on the original cost of the wells in service as is shown by the "Record" of the cost of these wells in addition to the ad valorem tax to which the wells are subject.

"Exhibit Number 1."

134 *Extract from Annual Return of the Indian Territory Illuminating Oil Co., so Far as Its Business Pertains to Public Service, to the State Auditor of Oklahoma, Showing the Amount of Assessment Rendered, the First Equalization by the State Board, and the Last Equalization, the Latter Amount Being Extended on the Tax Rolls for Osage County, Oklahoma, for the Year 1911.*

Name of township.	School dist.	Amount rendered.	First equalization.	Last equalization ext. tax roll.
Strike Axe (Dist. 12, in Caney Twp.)..	12	4,980.50	104,591.00	49,680.00
Strike Axe .....	13	6,918.30	145,284.00	69,209.00
Black Dog (should be Bigheart Twp.)	13	900.00	18,900.00	8,977.00
Same .....	28	14,309.80	300,505.00	142,740.00
Same .....	29	11,490.00	241,290.00	114,612.00
Town of Bigheart ..	29	3,095.60	650,081.00	308,788.00
Bigheart Twp. (assessed as Black Dog).	43	1,242.00	26,082.00	12,388.00
Same .....	35	8,088.90	169,864.00	80,565.00
		<hr/>	<hr/>	<hr/>
Totals Osage County.....		51,025.10	1,071,525.00	786,959.00

If rate of taxation is the same as last year 25.6 3/20 mills our tax in Bigheart will be \$7,909.60—orig. cost of plant \$4,136.41.

Gross Receipts at Bigheart Jan. 1 to Dec. 31, 1910, 3,061.51.

This includes gas to Southwestern Refinery which is located outside of town and has independent line not in system.

Rec-pt for Aug. Sept. & Oct. averaged about \$100 per month for domestic purposes.

"Exhibit Number 2."

135 *Extract from Annual Return of the Indian Territory Illuminating Oil Co., so Far as Its Business Pertains to Public Service, to the State Auditor of Oklahoma, Showing the Amount of Assessment Rendered, the Last Equalization by the State Board, the Latter Amount Being Extended on the Tax Rolls for Washington County, Oklahoma, for the Year 1911.*

Name of township.	School dist.	Amount rendered.	First equalization.	Last equalization ext. tax roll.
Lincoln .....	11	630.00	.....	6,300.00
Madison .....	15	126.00	.....	1,260.00
Madison .....	16	54.00	.....	540.00
Dewey .....	6	1,800.00	.....	18,000.00
Jackson .....	10	200.00	.....	2,000.00
Totals—Washington County....		2,810.10	.....	28,100.00

"Exhibit Number 3."

(Here follows assessment list for 1911, marked pages 136 to 148.)

149 (Filed Oct. 12, 1912. W. H. L. Campbell, Clerk.)

In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the Assessment of the INDIAN TERRITORY ILLUMINATING OIL COMPANY.

Appeal from the Decision of the State Board of Equalization.

Requests by the Indian Territory Illuminating Oil Company that the Honorable Referee herein find as follows as findings of fact and conclusions of law, and approves and adopts the same as findings in this case:

*Findings of Fact.*

First.

That the Indian Territory Illuminating Oil Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, duly authorized to do business in the State of Oklahoma and having its principal office and all of its business and property in the State of Oklahoma.

Second.

That in March, 1896, the assignor of said Indian Territory Illuminating Oil Company was granted a lease for mining purposes over the entire Osage Indian Reservation, by virtue of an Act of Congress of February, 1891, providing that such lands could be leased  
150 for mining purposes in such quantities and upon such terms and conditions as the agent in charge of said Reservation may recommend, subject to the approval of the Secretary of the Interior. That said lease granted to said assignor the privilege or license to explore and mine said Reservation for oil and natural gas.

Third.

That prior to March 3, 1905, viz: in January, 1902, the Indian Territory Illuminating Oil Company became the owner of said lease and entered upon a policy of subleasing the same to various firms, individuals and corporations, so that at the time of the trial and hearing of this action there were one hundred and fifteen sub-lessees, and by December 21, 1904, there were six hundred and eighty thousand acres out of the whole reservation that were so subleased. Said subleases, practically assigned to the sublessee certain parts of the territory with the right to explore for oil and yield a one-sixth royalty to the Indian Territory Illuminating Oil Company. Prior to March 3, 1905, the said company paid the Osage Indian tribe a royalty of one-tenth, but by the Act of Congress of March 3, 1905, compli-

mented by the decision of the President making said royalty greater, the said Indian Territory Illuminating Oil Company was paying said Indian tribe one-eighth royalty since March, 1906, and therefore receiving for its own part of the royalty from said sublessees one twenty-fourth of the oil production.

#### Fourth.

That said lease would expire by its own terms in March, 1906, but by Act of Congress of March 3, 1905, the Congress of the United States extended said lease to the extent only of such portion as had been subleased, viz, 680,000 acres, as follows:

"That any allotment which may be made of the Osage Reservation, in Oklahoma Territory, shall be made subject to the 151 terms and conditions of the lease herein authorized, the same being a renewal as to a part of the premises covered by a certain lease dated March 16th, 1896, given by the Osage Nation of Indians to Edwin B. Foster, and approved by the Secretary of the Interior and now owned by the Indian Territory Illuminating Oil Company under assignments approved by the Secretary of the Interior, which said leases and all sub-leases thereof duly executed on or before December 31, 1904, or executed after that date based upon contracts made prior thereof, and which have been or shall be approved by the Secretary of the Interior to the extent of 680,000 acres in the aggregate are hereby extended for a period of ten years from the 16th day of March, 1906, with all the conditions of said original lease except that from and after the 16th day of March, 1906, the royalty to be paid on gas shall be one hundred dollars per annum on each gas well instead of fifty dollars as now provided in said lease; and except that the President of the United States shall determine the amount of royalty to be paid for oil. Such determination shall be evidenced by filing with the Secretary of the Interior on or before the 31st day of December, 1905, such determination; and the Secretary of the Interior shall immediately mail to the Indian Territory Illuminating Oil Company and each sublessee a copy thereof."

#### Fifth.

The Indian Territory Illuminating Oil Company was organized by promoters in 1902, at \$3,500,000.00 capital stock, par value, and the lease was the sole consideration for said stock. Litigation ensued between the old owners and said promoters which resulted favorably to the old owners, and said owners took over said stock in lieu of said property. Said stock was transferred and distributed to the old stockholders or old owners about two years prior to the expiration of the lease in 1906, viz, in 1904, which was prior to the Act of Renewal by Congress of March 3, 1905.

#### Sixth.

That said stock had very little or no value at that time. There was no development on the property to any great amount and no

great oil producers were found until June 22, 1904, when the first well was produced in the so-called Ochelata pool.

Seventh.

152 That in order to secure production and the drilling of wells and furnish cheap fuel, the Indian Territory Illuminating Oil Company laid some small two inch and three inch pipe-line on the surface of the ground and conducted gas from gas wells to its sublessees who were drilling wells. These lines were temporary and superficial, and so laid on the ground as to be easily removed from one point to the other; and said company furnished said sublessees gas for fuel for drilling wells and operating leases at a flat rate, or at a certain price per well, which resulted in a loss to said Indian Territory Illuminating Oil Company, as far as said gas operations were concerned; but that said lines were built primarily for the purpose of encouraging and securing development so as to comply with the terms of the original lease hereinbefore referred to.

Eighth.

That said company did not hold itself out as being able and willing to furnish said gas in such manner to all sublessees, but entered into a contract with each one separately, depending on the location of the drilling, the cost of laying said line, the proximity of the gas well and the desirability of securing development at the particular point in question, and that said business had been conducted by it with certain of its sublessees in the eastern part of the 680,000 acres which were first developed, commencing in 1904.

Ninth.

That said company did not continue said business of piping gas to its sublessees in the western part of the 680,000 acres near Osage Junction, where the heaviest production was found, by reason of the expense and loss consequent upon the operation of that system.

Tenth.

153 That said company did not extend said lines in all instances, but it depended also upon the distance and the agreement between the parties and that a sublessee did not expect it on his part except as agreed to by the company. They were extended almost accidentally in the first instance and from time to time. The greater part of the production now has no surface lines but they carry on their own operations with their own gas, or from sources other than said company.

Eleventh.

That said company did not hold itself out at any time as being in the business of furnishing gas to sublessees, generally.

## Twelfth.

Said lines were extended into the towns of Avant and Bigheart, being small settlements of people, but without any franchise granted to said company. The same were extended at the solicitation of said people, but with no promise or agreement on the part of the company to continue the same.

## Thirteenth.

That the actual cost of said lines involved in this controversy, through which gas was so transported, was \$7,668.91, and the company has conducted a gas business through said lines as herein indicated at a yearly loss to itself and without profit, except as such gas business may have induced development of the fields for oil.

## Fourteenth.

The actual original cost of the gas line in Avant was \$1,625.18; in Bigheart was \$4,137.41, and the lines to the producers \$70,918.32. These lines have been put in from time to time for five or six years prior to the hearing and were returned at \$53,835.10. There-  
154 fore, this referee finds the value of said lines at such time at \$53,835.10.

## Fifteenth.

Considered as a business and going concern, the Bigheart plant was and is worth \$7,000.00, and the Avant plant was and is worth not more than \$2,500.00.

## Sixteenth.

Said company has no substantial, large pipe-line that will accommodate any large quantity of gas for any great distance.

## Seventeenth.

That the total actual value of all the gas-pipe lines and similar physical property in said gas business is \$53,835.10.

## Eighteenth.

The gas business and the oil business in the office of said company is kept entirely separate, is easily accessible and easily ascertainable.

## Nineteenth.

That the company showed its receipts and disbursements from the sale of gas in such business separate from oil for several years prior to the time of the hearing before the Board and down to May 31, 1911.



For the year 1910 the receipts were.....	\$35,947.45
And disbursements .....	41,700.89

Showing a loss of .....	5,753.44
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The loss by said company in said business for five years amounted to .....	50,030.10
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#### Twentieth.

That on the 22nd day of March, 1911, the said company  
155 duly filed with the State Auditor of the State of Oklahoma, as  
provided by law, a return and schedule of the amount and  
value of its property in the State of Oklahoma subject to taxation  
for the information of the State Board of Equalization in making  
its assessment of the property of said company, as provided by law.

That said return was in regular form and showed a valuation of  
\$53,835.10. That thereafter on the 18th day of April, 1911, Chas.  
F. Leach, manager of said company, appeared before said Board  
and gave his evidence with reference to the figures contained in said  
return. That the statement of said manager was confined to the gas  
pipe-line and gas business of said company and that his examina-  
tion by the members of said Board was confined to said business and  
there was no intimation by said Board of including all the oil busi-  
ness of said company in an assessment to be made by said Board as a  
public service business.

#### Twenty-first.

Thereafter on May 16, 1911, said Board of Equalization, without  
any further testimony, and without notice, raised and fixed the  
assessment of said company at \$1,130,535.00, but gave no reason to  
said company for said raise, nor the principle upon which it was  
based.

#### Twenty-second.

That prior to said hearing the said company had been yearly  
taxed as a public service corporation on said gas pipe-line solely.

#### Twenty-third.

That on the 29th day of June, 1911, the said company asked for  
and obtained a hearing before said Board and introduced the evi-  
dence of witnesses in its behalf, together with statements and figures  
supporting such testimony, which was confined to said gas  
156 lines and gas business, until said Board then went into an  
inquiry as to the oil business of the company. The witness  
not being fortified at said hearing with reference to the figures con-  
cerning said oil business requested to be permitted to make a state-  
ment thereof and file the same, or to appear again before the Board,  
which was granted.

## Twenty-fourth.

That on the 17th day of July, 1911, counsel for the company appeared before said Board and offered to enlighten the Board upon any subject that it desired with reference to said assessment.

## Twenty-fifth.

That on the 2nd day of August, 1911, the said company submitted full, complete and ample statements of the oil business and gas business separately of the company for each year for several years prior to 1910, and also for the year of 1910. That said Board introduced no witnesses and did not ask or inquire further into the business of the company as disclosed by said statements.

## Twenty-sixth.

On the 23rd. day of March, 1912, the said company appeared before the Referee herein with its witnesses, who were duly sworn, and the State of Oklahoma introduced no evidence, and did not cross-examine the witnesses for said company with reference to said statements showing the separate nature of the gas and oil business, but all of which were introduced in evidence before this referee.

## Twenty-seventh.

That said company is primarily in the oil business and the greatest part of its receipts and profits are from the royalties derived from the exclusive oil operations of its sublessees — being oil royalties exclusively.

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## Twenty-eighth.

That the Indian Territory Illuminating Oil Company received a royalty from oil alone from all its sublessees, being the one-twenty-fourth part, in 1910, to the value of..... \$949802.22

That it operated some oil leases directly itself for oil and received:

From Lot Number 32.....	21,362.13
From Lot Number 293.....	1,916.34
From Lot Number 275.....	606.80

So that its total income from oil alone for the year 1910

was .....	\$118,687.49
And the expense of such oil production was.....	36,593.19

## Twenty-ninth.

That from the leases that it operates itself it sells its oil direct to the pipe-line company and said company settles with the Indian Territory Illuminating Oil Company and the Osage Tribe of Indians

separately, and as to said royalties account it is paid direct to the Indian Territory Illuminating Oil Company by the pipe-line company.

Thirtieth.

That said company has paid all taxes under the revenue law of the State of Oklahoma the same as other oil and gas companies, as is customary throughout the gas and oil country, and has returned its physical properties in the oil business to the local assessor and has paid its production tax from time to time.

Thirty-first.

158 That many of the sublessee companies under the Indian Territory Illuminating Oil Company on the Osage lease are very heavy producers of oil, to a much greater extent and volume than is said Indian Territory Illuminating Oil Company, and the value of said properties of said sublessees so engaged is far in excess of that of said Indian Territory Illuminating Oil Company, and that said companies do not pay taxes as public service corporations, and do not pay taxes on the value of their leases, but return and pay on their physical properties only.

Thirty-second.

That the said Indian Territory Illuminating Oil Company is now and has been at all times operating under said lease through said Act of Congress and under the Rules and Regulations of the Department of the Interior, introduced in evidence in this case, wherein and whereby said Department supervises the conduct of the business in the field with said Indian Tribe and the said Department of the Interior has its inspectors and other officers in charge.

The above request for special findings of fact presented to me this 10th day of Oct., 1912. Said findings numbered 15, 16, 17, 18, 19, 28, 30 and 32, respectively are allowed by me and made part of my report in said cause as findings of fact, and the State of Oklahoma is allowed an exception. The remaining special findings above set forth are disallowed and refused as findings of fact in said cause, and the Indian Territory Illuminating Oil Company is allowed an exception to such refusal. I beg to transmit all of said requested findings to the Court.

R. M. CAMPBELL, *Referee.*

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*Conclusions of Law.*

First.

That the Indian Territory Illuminating Oil Company is not a public service corporation so as to be assessable by the State Board of Assessors in the State of Oklahoma. That its gas business, as dis-

closed by the evidence, is subsidiary to its oil business and is mainly for the purpose of facilitating the performance of the conditions of its lease of a part of the Osage Reservation renewed by Act of Congress, March 3, 1905.

Second.

That the small business accorded to and done with the scattered householders in Avant and Bigheart is too small for separate consideration as a public service, as there are no franchises and no obligations on the company to perform any duty and what gas is served in said places is subordinate to the demands and necessities of the field operators doing business under said governmental lease of license.

Third.

That the gas line and gas business of the Indian Territory Illuminating Oil Company employed and engaged in serving field operators under said lease is not a public service and should not be taxed as such.

Fourth.

That the value of the lines employed in said service to field operators is \$70,918.32. That the value of the oil business, oil production or oil property of the Indian Territory Illuminating Oil Company should not be assessed by the State Board of Assessors as a public service business. That the lease of the Indian Territory Illuminating Oil Company will expire in March, 1916, and that said company has no legal right to extension or renewal, and that the value of its intangible properties is very difficult to ascertain. That the larger value consists of the right of the said lessee of exploring for the oil and gas on a part of the property of said Indians Tribe—not vesting in the grantee any estate in the land or oil or gas but merely a license in the nature of an incorporeal hereditament.

Fifth.

That such right or license or privilege granted by said original lease so renewed by Act of Congress is not taxable under the laws of the State of Oklahoma, either by the local officers in the different counties or by the State Board, and the legislature of the State of Oklahoma has made no provision for the assessing and taxation of oil leases whether lying in public or private grant, except that the physical properties shall be assessed and taxed and a gross production tax paid by all oil companies.

Sixth.

The Indian Territory Illuminating Oil Company operating under said lease is engaged as a Federal Agent, in a Federal business, within a jurisdiction controlled solely by Congress, as Congress has jurisdiction exclusively over commerce with Indian tribes, under the

provision of the National Constitution quoted and relied upon in this case by the Indian Territory Illuminating Oil Company. That Congress in the conduct of the business and property of said Osage Tribe of Indians has seen fit, by Act of Congress, and without the consent or approval of any other person or body, to renew and grant this same original lease for ten years from March 16, 1906; that the operations and business conducted thereunder are under the direct supervision and superintendence of the Department of the Interior and that the Osage Tribe of Indians have a far greater interest in the conduct of said business than has the Indian Territory Illuminating Oil Company, as the said Osage Tribe of Indians receives one-eighth of the royalty and the Indian Territory Illuminating Oil Company only one twenty-fourth.

Said lease grants the privilege, license or right to prospect for oil and gas and the occupation, business or operations of said company is the license or privilege so granted by the Federal government, and the State of Oklahoma is without authority to lay a tax upon the operation, business or privileges of said Federal agent; except that said tax can be laid upon the physical property only of said agent. The valuation fixed by the State Board of Assessors in this case included all of said rights, grants, privileges and licenses.

The amount at which the property of the Indian Territory Illuminating Oil Company was fixed includes all these rights, and privileges and occupation commingled with the physical property and renders the whole assessment void.

The Referee recommends that judgment be entered declaring void the assessment of the Indian Territory Illuminating Oil Company.

Respectfully submitted,

INDIAN TERRITORY ILLUMINATING  
OIL CO.,

By JOHN H. BRENNAN, *Attorney*.

The above conclusions of law presented to me this 10th day of Oct., 1912, by Indian Territory Illuminating Oil Company, Appellant, with the request that they be approved and adopted as conclusions of law in said cause. Said request is refused and exceptions allowed to said Appellant. I beg to transmit the same to the Court for consideration.

R. M. CAMPBELL, *Referee*.

162 In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the Assessment of the INDIAN TERRITORY ILLUMINATING OIL COMPANY.

Appeal from the Decision of the State Board of Equalization.

*Motion for New Trial.*

Comes now the said Indian Territory Illuminating Oil Company, and moves the Honorable Referee to vacate and set aside his report of findings of fact and conclusions of law rendered herein, and to grant a new trial, for the following causes which affect materially the substantial rights of said appellant:

First. Irregularity in the proceedings of the Referee, or prevailing party, or any order of the referee, or abuse of discretion, by which the said appellant was prevented from having a fair trial.

Second. That the findings and report are not sustained by sufficient evidence, or is contrary to law.

Third. Error of law occurring at the trial and excepted to by the appellant.

Fourth. Error of the referee in refusing to allow and approve the requested findings of fact and conclusions of law made by appellant

JOHN H. BRENNAN,

*Attorney for Appellant.*

Filed this Oct. 11, 1912 and overruled.

Exceptions allowed said Appellant.

R. M. CAMPBELL, *Referee.*

Endorsed: 3240. Filed Oct. 12, 1914. W. H. L. Campbell, Clerk.

163 In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the Assessment of the INDIAN TERRITORY ILLUMINATING OIL COMPANY.

Filed Oct. 12, 1912. W. H. L. Campbell, Clerk.

Appeal from the Decision of the State Board of Equalization.

*Bill of Exceptions.*

This cause came on for hearing before the Honorable R. M. Campbell, referee, the appellant appeared by John H. Brennan, its

attorney, and the State of Oklahoma appeared by W. C. Reeves, Assistant Attorney General, and the following proceedings were had, to-wit:

The pleadings and proceedings and all testimony and Exhibits had and introduced before the State Board of Equalization, was introduced in evidence by the appellant, and by agreement of the parties hereto was taken and considered as evidence in the hearing before the referee.

A true and correct copy of which is attached hereto and made a part hereof, as follows, to-wit:

164 (Filed Oct. 31, 1911. W. H. L. Campbell, Clerk.)

In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the Assessment of The Indian Territory Illuminating Oil Company.

*Petition.*

Now comes the Indian Territory Illuminating Oil Company, and for its petition to this Honorable Court in the matter of its appeal from the assessment and valuation of its taxable property for the fiscal year ending June 30, 1912, by the State Board of Equalization of Oklahoma, alleges and says:

I. That petitioner is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, duly authorized to do business in the State of Oklahoma, and having its principal office and all of its business and property in the State of Oklahoma.

II. That heretofore, to-wit, on the 22d day of March, 1911, your petitioner duly filed with the State Auditor of the State of Oklahoma, as provided by law, a return and schedule of the amount and value of its property in the State of Oklahoma subject to taxation, for the information of the State Board of Equalization in making its assessment of the property of your petitioner, as provided by law; a copy of said return being included in the record herewith.

III. That thereafter, to-wit, on the 30th day of August, 1911, the State Board of Equalization, being regularly in session for  
165 the purpose of making assessment of the valuation of the taxable property of public service corporations, according to law, did arbitrarily and recklessly, and without any evidence to support its action in that regard, and in direct conflict with all the evidence submitted before said Board, and in conflict with and disregard of the showing made of the value of petitioner's property in said schedule and return thereof, increase and fix the valuation of your petitioner's property for the purpose of taxation from the amount sworn to in said return, to-wit, \$53,835.10, the same being the actual fair cash value of said property, to \$538,350.00; said



valuation being therefore \$484,514.90, or nine hundred per cent, in excess of the fair cash value of said property; that thereafter, and on the 2d day of October, 1911, your petitioner, by its attorneys, appeared before said Board for the purpose of obtaining a modification of said assessment, or a dismissal thereof, for the reason that your petitioner claimed, and still claims, that it is not a public service corporation and is therefore not subject to assessment by said Board; but that said Board failed, neglected and refused, and still fails, neglects and refuses, to modify, reduce or correct said erroneous unfair, unreasonable and arbitrary assessment, by reducing the same to the fair cash value thereof, as set forth in said return, or to dismiss the same, or to make any further order or ruling in the premises.

IV. That thereafter, and on the 26th day of October, 1911, said Board being still in session, your petitioner, feeling aggrieved, did file with the Secretary of State of the State of Oklahoma, and with the State Auditor of the State of Oklahoma, Ex Officio Secretary of said Board, notice of its appeal to this Court from the said action of said Board, setting forth in said notices in full the grounds  
163 for its appeal, as required by law; a copy of said notice, with acknowledgments of the service thereof duly certified by said officers under their respective seals, being hereto attached as a part of the record herein.

V. That on the same day your petitioner made written demand of the said Board of Equalization, by its said Secretary, for a transcript of the record in the matter of your petitioner's assessment, including a complete record of the returns, evidence, pleadings, exhibits and statements filed, heard, introduced or considered before the said Board or in said Secretary's office relating to your petitioner's assessment, and of all orders, motions, rulings and proceedings of the said Board in connection with said assessment; and that on the 30th day of October, 1911, Hon. Leo Meyer, State Auditor of the State of Oklahoma, and Ex Officio Secretary of the said State Board of Equalization of said State, did make, execute and certify a transcript of all of said proceedings, pleadings, exhibits, statements, reports, returns, and of the oral and written testimony filed, heard, introduced or considered by and before the said Board of Equalization or in the office of the said Auditor of the State of Oklahoma relating to the assessment of your petitioner's property by said Board for the fiscal year ending June 30, 1912; and that said transcript, duly certified by the State Auditor of Oklahoma as aforesaid, with the seal of his office thereto affixed, together with a copy of the notice of appeal served on the Secretary of State of the State of Oklahoma and on the said State Auditor, as Secretary of said Board of Equalization, as aforesaid, and duly certified and acknowledged by said officials, with their respective seals attached, and a copy of the  
167 request for a record made by your petitioner, as aforesaid, with receipt of a copy thereof duly acknowledged by the said Secretary of the Board, is hereto attached, marked Exhibit A, and is here referred to and made a part of this petition, as the record in this cause.

VI. That in the consideration and making of the assessment and valuation of your petitioner's property for the purpose of taxation, and in failing, neglecting and refusing to modify, correct, reduce or dismiss said assessment, the State Board of Equalization committed certain errors to the prejudice of your petitioner, the Indian Territory Illuminating Oil Company, in the following particulars, to-wit:

First. That said company had before the making of said assessment and valuation, and as required by law, filed in the office of the Auditor of the State of Oklahoma its duly verified return of its taxable property, showing the actual fair and true cash value thereof as \$53,835.10; that said sum represents and did represent the actual fair cash value of the taxable property of said company as of the first day of February, 1911; and that the value of said taxable property has not increased since said date, but has rather decreased; and, further, that on the 18th day of April, 1911, said company, by its manager, appeared before said Board of Equalization and introduced evidence in support of the statements and showing made in said return.

Second. That on the sixteenth day of May, 1911, the said Board did arbitrarily and unjustly, and contrary to the evidence before it and to said verified return, and without any information or evidence justifying such action, assess and fix the valuation of the taxable property of said company at \$1,130,535; that thereafter, 168 and on various occasions, the said company, by its attorneys, appeared before said Board and protested against and complained of said assessment as being excessive and unreasonable, and introduced evidence in support of said complaints and protests; said appearances being on the 29th day of June, the 10th day of July, the 17th day of July, the 2d day of August, and the 30th day of August, 1911; that on said 30th day of August, 1911, said Board reconsidered said assessment of May 16, 1911, and assessed the property of said company for the purpose of taxation at \$538,350; said assessment being contrary to the return made by said company and to the evidence before said Board, and being \$484,514.90, or nine hundred per cent, in excess of the fair cash value of said property as set forth in the verified return thereof filed in the office of the Auditor of the State of Oklahoma, and placed by him before said Board, to-wit, \$53,835.10; that on the 2d day of October, 1911, said company appeared before said Board, by its attorneys, to protest against and complain of said excessive, unreasonable, arbitrary and erroneous assessment and valuation of its property, but that said Board failed, neglected and refused, and still fails, neglects and refuses, to change, correct or modify said assessment and valuation, and ignored and disregarded, and continues to ignore and disregard said return and all of said evidence introduced before it supplementary to and confirmatory of said return.

Third. That said arbitrary, unjust and erroneous action of said Board, in so assessing the valuation of said company's property for the purpose of taxation in the State of Oklahoma, will, if allowed to stand, greatly and unfairly increase the burden of taxation resting

upon said company, and will deprive it of its property without due process of law, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States, and Section 7 of Article II of the Constitution of the State of Oklahoma, and will deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States.

Fourth. Your petitioner further alleges and states that in fixing the assessed valuation of the taxable property of said company, the said Board, as your petitioner is informed and believes, attempted to place a value upon and to tax the franchise, occupation, license, or right of said company to do business; which franchise, license and right the said company possesses and is exercising in the reservation of the Osage Tribe of Indians, the same being Osage County, Oklahoma, under and by virtue of a lease specifically approved by the United States Government, through its Interior Department, as guardian of said Tribe; that said lease with said Tribe was specifically renewed by the United States Government by the Act of March 3, 1905, and was further by said Government recognized in the Osage Allotment Act, being the Act of June 28, 1906; that the territory comprising said Osage Reservation, as aforesaid, is under the exclusive jurisdiction of the United States insofar as the rights of said Osage Tribe are concerned; that the operations of said company in said territory, under said lease contract, so made, approved and recognized, are governed by and carried on under rules and regulations promulgated by the Honorable the Secretary of the Interior, as provided in said lease, and that this company is under the direct control of the Government of the United States, exercised by the officers of the said Department thereof; and that any attempt to assess and tax this company's franchise or right to do business and operate under said lease is an attempt to assess and tax a right and franchise granted by the Federal Government, and is illegal and void, and, further, that any attempt to tax this company's operations and right to do business with said Osage Tribe of Indians under said lease is an attempt to impose, and will result in imposing, an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe, contrary to the provisions of Section 8 of Article 1 of the Constitution of the United States.

Fifth. That said company, your petitioner, is not engaged in a public service of any kind, and is not in any sense a public service corporation, as shown by the evidence presented to said Board; that said Company is not taxable on the assessment of said Board, and has no property which is subject to assessment and valuation for taxation by said Board, under the laws of the State of Oklahoma.

Sixth. That while this company's surface gas lines run into and through the towns of Avant and Bigheart, in said Osage Reservation, and while this company supplies gas from its said lines to domestic consumers in said towns, it has no franchise rights or duties whatever as a public service corporation in said towns, or either of them, for any purpose; and said company insists that if its service to the

people of said towns be adjudged a public service, and this company a public service corporation as to said towns, that still, in no event should any of this company's property be assessed and taxed as employed in a public service, as to said towns, other than the property actually used in serving the domestic consumers in said towns, as shown in the evidence before said Board, and in said return.

Seventh. That the furnishing of gas by this company to the Ochelata Gas & Water Company and the Bartlesville Gas & Oil Company, as set forth in the evidence before said Board, is not a public service; that the said companies so furnished with gas by

171 this company are themselves public service corporations in the towns of Ochelata and Bartlesville, respectively, by reason of certain franchise rights therein, under which they furnish gas to the domestic consumers in said towns, and are so assessed and taxed, as shown by the records of said Board; and that it is unfair, unjust and illegal to attempt to assess and tax this company as a public service corporation upon the same business.

Eighth. That the said Board had no right or authority to increase the valuation of the taxable property of the said company for the purpose of taxation, above the valuation thereof as set forth in the verified return thereof duly filed in the office of the State Auditor, without evidence justifying such increase; and that its action in so increasing such valuation, and in failing, neglecting and refusing to modify, reduce, correct or dismiss such erroneous valuation, and in ignoring and disregarding the information and evidence before it, was arbitrary, unjust, unreasonable and illegal, and will, if allowed to stand, result in depriving this company of its property without due process of law, and in depriving it of the equal protection of the laws, and will render this company unable to carry out the provisions of, and to carry on and perform the duties imposed upon it by, its said lease and contract with the Osage Tribe of Indians and the United States Government; thereby hindering and obstructing the performance of a contract with the Federal Government, and interfering unduly and illegally with commerce with an Indian Tribe; all contrary to the specific constitutional provisions hereinbefore referred to.

Ninth. That this company is now paying and has heretofore paid all legal taxes upon its business and property in this State, including gross revenue, gross production and ad valorem taxes, and that it has not at any time attempted to avoid the payment of any

172 just or legal tax.

VII. Your petitioner further alleges and states that this appeal is taken, and notice thereof was duly given to the Secretary of State, as required by law, and to the State Auditor, as Secretary of the State Board of Equalization, within sixty days after the making of said assessment, and prior to the adjournment of said Board, and that all the matters and things herein set forth were duly brought before said Board, as shown by the record hereto attached as Exhibit A, and that all the grounds of appeal herein stated were fully set forth in said notices of appeal.

Wherefore, your said petitioner, the Indian Territory Illuminating

Oil Company, respectfully requests an examination of this, its petition, and of the transcript and record certified by the Auditor of the State of Oklahoma, as Secretary of the State Board of Equalization, and of the notice of appeal served on the Secretary of State of the State of Oklahoma and on the said Secretary of the State Board of Equalization, hereto attached, with acknowledgments of service, and requests a hearing on this, its appeal from the action of said Board in making said arbitrary, unjust and illegal assessment and valuation of its taxable property and in failing, neglecting and refusing to reduce, modify, correct or dismiss said assessment, in this Honorable Court, on all of said matters set forth in said record and in this petition; and upon final hearing, that the action of said State Board of Equalization be reversed, and that said Board be decreed and adjudged by this Court to be without jurisdiction to assess the property of your petitioner for taxation, for the reason that it is not a public service corporation; or, if any part of the property of your petitioner be adjudged to be used in a public service, that said Board be permitted and directed to assess only that part of your petitioner's property so used, in accordance with the return and the evidence set forth in the record herein; and, if said prayers be denied, that said Board of Equalization be directed and required to assess the property of your petitioner at its fair cash value, in accordance with the return thereof and the evidence before said Board as set forth in the record herein; and that upon such hearing your petitioner have such other and further relief as may to the Court seem just and proper.

THE INDIAN TERRITORY ILLUMINATING OIL COMPANY,

By JOHN H. BRENNAN,  
HARRIS & NOWLIN,  
KENNETH C. CRAIN,

*Attorneys.*

In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Co.

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Filed Oct. 31, 1911. W. H. L. Campbell, Clerk.

175 Be it remembered, that on the 22d day of March, 1911, the Indian Territory Illuminating Oil Company filed in the office of the Auditor of the State of Oklahoma its annual return, with a letter of transmittal; said return and letter being in words and figures as follows, to-wit:

(Exhibit A—Record.)

176 (*Letter of Transmittal, with Return.*)

(Letter Head.)

BARTLESVILLE, OKLA., March 2, 1911.

Leo Meyer, State Auditor, Oklahoma City, Oklahoma.

DEAR SIR: Enclosed please find Annual Return of the Indian Territory Illuminating Oil Company, showing the taxable property held by it in Osage and Washington Counties, as a Public Service Corporation.

Regarding the questions relative to surplus, undivided profits, capital invested, etc., which have not been answered for the reason that it would be misleading, inasmuch as this Company is primarily a producing company of Oil and Gas, and is only engaged incidentally as a Public Service Corporation, in the supplying of gas to its sublessees for fuel for the development and operation of its lease held by it on the Osage Reservation, and for domestic service in two or three small towns, and which service is of very small moment, probably not amounting to more than an average of \$200.00 per month for each town, its income, surplus, profits, etc., are almost wholly from its oil business, and inasmuch as the oil

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M. L. P.



business and gas business of this Company has never been separated, it is impossible to answer these questions with any degree of accuracy, for the reason that it was never intended by the management to engage in Public Service business, but to furnish gas in wholesale quantities to Companies that were so engaged. But, inasmuch as it was necessary, to supply our own leases and our sub-lessees with gas for fuel, to build long lines, we naturally, for the accommodation of those along the lines, have permitted others to connect, but you will readily understand that the service  
 177 along 70 miles of mains, over a sparsely settled country like the Osage is not conducive of much profit, as the care and expense of collection more than equals the receipts.

In relation to our Gross Receipts from the sale of gas for the year, I will say that they amounted to \$35,947.91. Against this we have \$14,873.13 as cost of maintenance, and by careful computation we find that the wells in service to operate this gas deteriorated during the year 28%, and that 28% of their original cost, which we consider would be a fair offset against our receipts, amounted to \$6,884.87. In addition to this, we spent over \$15,000.00 in drilling wells to increase our gas production, with the result that all the wells drilled were complete failures. This last item we believe would also be reasonable to charge against our receipts. Our maintenance account does not include any of the office expense, general expense, legal expense, or any other expense incidental to the general business of the Company, which amounts to many thousands of dollars each year, neither have I taken into account any taxes of the Company. You will thus note that our gas business would be operated at a loss were it not for our other interests, and were it not that it was necessary to the operation of our oil business it would be poor business policy to continue.

In the matter of names and addresses of our stockholders asked for, will state that we do not keep a record of them in this office. That record is kept by the Corporation Trust Company, 15 Exchange Place, Jersey City, N. J., and we are unable to furnish it, except by application to them.

Trusting that this report will be satisfactory, and assuring you of our readiness at any time to give you any additional in-  
 178 formation, I am

Very respectfully,

INDIAN TERRITORY ILLUMINATING  
 OIL CO.,

By CHAS. F. LEACH, *Manager.*

C.F.L./C.W.A.  
 Enc.

(Here follows annual return, marked pages 179 and 180.)

181 That thereafter, and on the 18th day of April, 1911, the State Board of Equalization of the State of Oklahoma met at Oklahoma City, Oklahoma, with Charles A. Taylor acting as Chairman, and G. T. Bryan and Leo Meyer present, and that Mr. C. F. Leach appeared before said Board on behalf of the Indian Territory Illuminating Oil Company and made a statement; said statement and a verbatim report of the examination of the said C. F. Leach by the Board at that time, being as follows, to-wit:

182 *Meeting at Oklahoma City, April 18, 1911.*

Present: Charles A. Taylor, acting as Chairman; G. T. Bryan, Leo Meyer.

Mr. C. F. Leach of the Indian Territory Illuminating Oil Co., appeared before the Board and made the following statement:

I do not know that we will have any troubles; however, I thought it well while the Board was in session to make a statement. Now, the Indian Territory Illuminating Oil Co., as you are probably aware, is the original lessee of the Osage Reservation, and they have subleased to a number of sublessees and have practically reserved to themselves the gas. Early in the development, before Statehood, they laid various lines over the reservation for their own service and for the service of the various sublessees for the purpose of developing for oil and gas. These lines are two and three inch, laid on the surface of the lands, and with very few exceptions they are buried, except in going across a piece of land desirable for cultivation and are but temporary lines. By that I mean that perhaps in one locality there will be development and lines will be laid to accommodate that development. Probably in a few months, possibly in a year, it will be necessary to take those lines up and move them somewhere else. Now, since we have made this report, on the first of March, we have taken up four miles that is returned to the Board of Equalization in our report. Some of this has been laid elsewhere and some held up waiting for a call to be laid at some other point. In making that return, I have based my figures upon what second hand pipe would cost, and allowing what I think would be fair for the laying of that character of lines. Heretofore we have returned on the same basis and the Board of Equalization has seen fit to consider that we have a franchise right in addition to the cost. This, we think, under the conditions, is an erroneous opinion, for the reason, as I say, it is not like as if you were laying a permanent line that would be there for a number of years and in which you were engaged in carrying on a public service business.

This is not, we do not think, a public service, in the first place for the reason that we are the producers of this gas. That under our contract, which I will leave a copy with you for your consideration, with the Osage Tribe of Indians, (Copy attached) and we are granted the right to lay these lines for the purpose of carrying on the development of oil and gas and also for the purpose of marketing this gas. Now, these lines are all within the Territory covered by this lease except the four miles I spoke of as being taken up. In addi-



tion, however, to the service to our sublessees and to ourselves, there are, of course, a number of what you might call domestic consumers along these lines. They are receiving service from us, but we have something like 70 or 75 miles of lines and a comparatively few consumers along these lines, and you will note that from an industrial standpoint, if we were to try to collect from these, the amounts received would not pay for the cost of collecting.

We are also supplying gas to the town of Big Heart and that particular part would reasonably be called public service, because it is. However, we were engaged in that prior to statehood under our laws, but that is but a very small per cent. I will further add that our gas business is not a remunerative business. Now then, of course, the question would naturally arise as to why we are engaged in it if that is true. I will explain that by saying that we have a

greater interest in developing the property than we have in the profits derived from the gas, because our profits come from the production of the oil, because the more barrels of oil produced, the more is our royalty in them. We have, I will state, in all these subleases an equity interest, or you might state a brokerage interest in all the oil produced, so that is where we get our profit. In making my report for the Corporation Commission last year, you will find in that report these figures:

Gas wells and maintenance.....	\$7,926.00
New wells.....	6,605.00
Expenses of changing of lines.....	5,703.00
Meters .....	247.00
Tools and instruments.....	333.00
Estimate general taxes.....	1,500.00

We were assessed \$70,000.00 so I think I am away under. Our gross revenue tax was \$295.00. I estimated 25% of the general office salaries and expenses, \$2,300.00; 25% of clerk hire, \$250.00; horse care, wagon and hire, \$863.00, making a total of \$30,440.00. There was received from gas during the same period, \$28,415.00, so you can see there was a shortage. Now, as I stated before, in the first place, we hardly think we should be considered a public service corporation. In the second place, on account of the character of our lines, we feel that we should not be charged any more or assessed any more than our lines are actually worth. That there is no franchise value such as would be in a regular public service corporation where they have their lines permanently laid and are making a business of the sale of gas to provide consumers. And third, that in view of the fact that we are only marketing this to our nearest market, that additional values should not be placed upon it. It is necessary, in marketing gas, to convey it a certain distance, be that ten feet, one hundred feet or three hundred feet; if there was a pipe line we were delivering it to, we would have to pipe it a certain distance from the well. If we conveyed it 100 feet to a pipe line, we might be classed as a public service corporation. It does not seem to me it makes any difference whether 100 feet or a mile. I think that is about our position.

By Meyer:

Q. From this statement, you have not made any improvements at all, have you, comparatively speaking, with last year?

A. You see, our improvements are taking up and moving some place else. Let me illustrate. It is just moving around from one place to another.

Q. Your company is incorporated with \$3,500,000.00 under the laws of New Jersey; is that all paid in?

A. I cannot say. I will be frank with you. I do not know. I have just been with the company a year. All of that was done years ago, and consequently I do not know.

Q. Is it not a fact that your company is in the field more for the purpose of handling lease property in Oklahoma than for actual profit?

A. No.

Q. You simply sublease?

A. Let me explain; there is a misconception as to what the Indian Territory Illuminating Oil Co. is at this time, in relation to handling of leases. A lease was originally granted, covering the entire Osage Reservation, about 1,500,000 acres, and as you will notice, by the lease, there was a provision for renewal under certain conditions. This lease was renewed in 1905 for an additional period of ten years, to the extent of 680,000 acres. This 680,000 acres was to cover just the lands that had been subleased by the Indian Territory Illuminating Oil Co. At the time of that renewal, the Indian Territory Illuminating Oil Co. found itself with 2,000,000 acres upon which they had actual operating wells. Now all the territory that the Illuminating Oil Co. now owns they have purchased, just the same as you would purchase, from a sublessee, and they have no lands for sublease since the renewal of the lease in 1905 except such lands as they have purchased. I will say in relation to that, that they have not to my knowledge issued a sublease since the renewal covering any lands except in two instances which were to perfect title, and with the consent of the Secretary of the Interior, and all papers were returned to the company and they issued a new sublease, simply to perfect title. They had no equity in the property.

Q. When you rendered these figures, did you expect the Board to at least double them?

A. No, I did not.

Q. You would not object to this Board of Equalization putting the figures to where they were last year?

A. No, I think that is unjust. If you will note there, you will see that I have shown you the figures on second-hand pipe. There is a list in which we quote two-inch pipe at  $5\frac{1}{2}$  cents to  $6\frac{1}{4}$  cents. In this return, I have allowed 7 cents for that pipe and allowed \$54.00 for the laying of it. In the matter of three-inch pipe, it is quoted from  $13\frac{1}{4}$  to 14 cents. You will note that I have returned it at 16 cents, and allowed \$85.00 for laying it. In the matter of four-inch pipe, that is quoted at  $21\frac{1}{2}$  cents to 22 cents, and I have just returned it at 25 cents and then allowed \$250.00 per mile for laying

it. The 5½ inch, that is ten-pound casing, that is just exactly what it cost. I returned it at what it cost, and have allowed \$496.40 for laying it. You see I have tried to return this at just what the material was worth. Unless you find that there is a franchise value, I do not think there is any value in the lines over and above at what I have returned it, and unless you find a fictitious value, I do not think there is any grounds for raising it.

185 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Co.

Carl Lumpkin, of lawful age, being first duly sworn, on oath says: That he is one of the official stenographers and reporters of the proceedings of the State Board of Equalization; that in such capacity, he attended the meetings of said Board from time to time, and faithfully and correctly reported said proceedings; that he attended the meeting of said Board held on the 18th day of April, 1911, and that the foregoing pages, headed and referred to as of that day, contain a full, true, correct and complete transcript of his shorthand notes of the proceedings on said day relating to the assessment of the Indian Territory Illuminating Oil Company, and a full, true and complete record of all oral and written testimony, and of all exhibits, statements and pleadings introduced thereat on behalf of said Company, and of the rulings and orders of said Board in relation thereto.

CARL LUMPKIN,

*Official Reporter.*

Subscribed and sworn to before me, this 30th day of October, 1911.

E. F. KEYS, [SEAL.]

*Notary Public.*

My commission expires January 4, 1913.

186 That, thereafter, and on the 16th day of May, 1911, the State Board of Equalization met at Oklahoma City, Oklahoma; a true copy of the minutes of its proceedings relative to the assessment of the Indian Territory Illuminating Oil Company being as follows, to-wit:

187 OKLAHOMA CITY, OKLAHOMA, May 16, 1911.

\* \* \* \* \*

The Board of Equalization met pursuant to recess taken at 1:30 P. M. with the following members present:

Governor Lee Cruce, Chairman.

State Auditor Leo Meyer, Secretary.

State Treasurer Robert Dunlop.

Secretary of State Ben F. Harrison.

State Examiner and Inspector Charles A. Taylor.

President Board of Agriculture G. T. Bryan.

Attorney General Charles West.

\* \* \* \* \*

It was moved and duly seconded that the assessed valuation for the purpose of taxation of the property of the Indian Territory Illuminating Oil Company be fixed at \$1,130,535. Motion carried, all members voting aye.

\* \* \* \* \*

State examiner and Inspector Taylor made inquiry as to the business transacted by this Board during his absence during the morning session and ratified the action of the Board.

It was moved by Harrison, seconded by Dunlop that the State Board of Equalization adjourn subject to the call of a majority of the members of the Board or until such Board meets to equalize the valuation of the property as returned by the county clerks. Motion carried, all members voting aye. The Board thereupon adjourned.

188 That thereafter, and on the 29th day of June, 1911, the State Board of Equalization met at Oklahoma City, Okla., and certain proceedings were had before said Board relating to the Assessment of the Indian Territory Illuminating Oil Company, and certain oral and written evidence introduced; a true transcript of said proceedings, with copies of the exhibits introduced, being as follows, to-wit:

188½ OKLAHOMA CITY, OKLA., June 29, 1911.

The State Board of Equalization met at ten o'clock A. M. June 29th, 1911, with the following members present:

Governor Lee Cruce, Chairman.  
State Auditor Leo Meyer, Secretary.  
Secretary of State Ben F. Harrison.  
State Treasurer Robert Dunlop.  
President Board of Agriculture G. T. Bryan.  
Attorney General Charles West.

Absent: State Examiner and Inspector on account of illness and out of the City under the direction of a physician.

The following proceedings were had:

Mr. John H. Brennan representing the Indian Territory Oil and Illuminating Company was present and made the following statement:

"Merely for the purpose of having an issue to answer the situation, I would like to ask if it is proper to ask what the grounds were upon which the assessment was raised from \$90,000 to over a million and if there was any evidence on that proposition that we should meet here.

Mr. Harrison: You were before the Board. Didn't you appear before the Board?

A. No, one of our witnesses appeared and made a statement along the lines of the return. All I ask for now is for the purpose of getting an issue and seeing what we have to meet.

Mr. West: The Board considers not only the sworn statements made to it but everything they know or hear of.

A. I merely wanted to know what it was that was introduced in evidence if anything upon which you made the raise.

Mr. West: Any one comes before us we ask him what the cost of pipe lines are, what the business probably pays and what it probably costs, we couldn't give it all to you.

A. Then as I understand it there wasn't any additional evidence introduced in our absence.

Mr. Harrison: Other witnesses that came before us on other matters were asked questions concerning various companies.

Mr. West: I think we asked you about some four or five companies didn't we?

A. Yes sir.

Q. That is the way we do with pretty nearly every one.

A. The raise was so startling we didn't know but what you had something in mind.

Mr. West: The explanation of that is, we are taking the business as a business; we are not assessing the pipe in the ground.

A. Even as a business I didn't know but what there was some evidence introduced you know. I would like to call the Chairman's attention to our return in one particular if you have the return here. Mr. Chairman the only point is that there are two questions in the printed form; total operating expenses for the year ending June 30, 19— and total expenses for repairs ending June 30, 19—; total expenses for improvements. That was answered more fully than might be answered here. More fully and thoroughly by an attachment as an exhibit to this return and I didn't know but what it might have escaped your attention.

Q. What is the point about it?

189 A. The point is, there were two or three questions that were in such form that they were not answered and if your attention was called to it you might think it was intentional if it was not for the fact that the exhibit next to the report answered it more fully and completely.

Q. What were those questions about?

A. Total improvements, etc.

Q. What is the amount he spent in the maintenance of the property separate from the drilling of the holes?

A. I haven't got that letter before me now.

Q. Can you tell me about what it was, because a difference of several hundred dollars wouldn't make any difference.

A. I can get you a copy of that letter.

Q. How many miles of main line?

A. 65 or 70 I think.

Q. What kind of pipe?

A. Two inch and three inch. I think, most of the surface pipe.

Q. That gas pipe?

A. Yes sir.

Q. Have you any trunk line at all?

A. No, none at all. We are not in the gas business. I think there is a mis-understanding as to why these lines were built.

Q. What business are you in?

A. The oil producing business and these gas lines are temporary pipe lines lain on the surface of the ground for the primary purpose of furnishing the producers of oil with fuel.

Q. For drilling?

A. For drilling.

Q. You sell them the gas?

A. Ninety per cent. We sell them the gas; we have an interest in each lease we thus serve and it is for the purpose of promoting our own interests that these lines have been laid; probably different from any other business you could think of.

Q. The probability is you sell your gas for pretty nearly what it cost you?

A. We sell it for less, losing fifty thousand dollars in five years.

Q. Do you sell to anybody you are not interested with?

A. Yes sir, two little towns, Avant and Big Heart.

Q. How much did you make last year on those two towns, gross?

A. I think the gross receipts from those two towns would be \$500.00. Four thousand feet a year. We can give you statements under oath telling it exactly.

Q. How — profit did you make out of that?

A. Just in a minute. I would like to make a record here. Do you want me sworn?

Q. If you want to be.

A. If you please.

(The witness is here sworn.)

If you will let me introduce this map.

(Map showing the lines of the Indian Territory Illuminating Oil Company offered in evidence and made a part of the record in this case and Marked Indian Territory Illuminating Oil Co.'s Exhibit A.)

It shows all our lines absolutely. It will explain the business and how we happened to get into it. This shows the two inch, three inch and four inch line and it is drawn according to the scale and so you have the whole business before you.

Q. We have so much to do and so little time to do it in you will have to call to our attention what is material to the question.

A. The whole map. Now these lines were not put in all at once. They were put in by extending the lines running from the small gas wells to a producer, then extended, then run over, then taken up and moved and put over to another producer's wells and most of these lines, ninety per cent of them can be moved and are moved from time to time and year to year for the purpose of getting this production. The little towns of Avant and Big Heart, the lines in those productions, there is no part that can be used for a trunk line or large system in introducing gas at a distance to large consumers. We haven't introduced this system from where we get the most oil. We get the most oil from near Osage Junction for the reason that it is a losing system; we got into it by accident and not intention-



ally. It has been a losing game and I have been against it as far as I am personally concerned all the time. We have lost fifty thousand dollars, except we charged in there one third of the office expenses and if you would strike out that it would show a loss anyway.

Q. What is the actual loss you can allocate to this business?

A. I would say disregarding office expenses, it would show a loss of five and ten thousand dollars. Where we run these surface lines to the producer we charge a flat rate.

Q. But the rest of the business is simply furnishing gas to oil drillers with whom you are interested in the lease?

A. Yes sir. Except we furnish Ochelata; we also furnish about \$200 a month to the Bartlesville Oil and Gas Company. We are also bound under our lease to furnish members of the Osage Tribe free of charge. Then there are some farmers along the line——

Q. What do the farmers' business amount to?

A. It amounts to——

Q. Gross.

A. The total collections are \$190.00 a month but \$96.50 is supplied by the oil companies, therefore, outside of the oil companies and the amount on the lease there would be \$94.00 a month from the domestic consumers along that line. About a year ago we attempted to get into a larger gas business and we have drilled a series of ten or twelve dry holes all over this up here and the gas business, such as you anticipate we might be in now we are not in that business yet, although we have a good deal of eight inch pipe ordered, and of course when we do get into it we will file a map showing just where we proceed when we start in. Now the company is not in the leasing business now. Say prior to Dec. 1st, 1904, its property has all been sub-leased. It only has 2,000 acres, largely given to it and 20,000 it bought. It has a royalty from the rest of the stuff of 1/24 net.

Q. That is the oil business?

A. That is the oil business and that of course is 95 per cent of the business.

Q. You intend to go into the gas business?

A. If we get the gas, but we have failed in the last year.

Q. What are your rights worth?

A. The gas in the ground?

Q. Yes sir?

A. I haven't any idea. We thought they were considerable in 1909.

Q. Have you any one present who knows more about that than you do?

A. No.

Q. Then you can't give the Board any information at all?

A. Except we drilled nine or ten holes in succession last year, getting one small gas well. A. That has just been put in, and we may not put it in.

Q. You intend to go into the business of selling gas?

A. We did intend to but we haven't got the gas, we failed to

find it. A short time ago I was down here with reference to another company and the Governor suggested to me that things might change between then and now and that is the change; it has grown a great deal worse and come to a complete standstill with reference to both cases.

Mr. Harrison: Do you turn in any valuation for your interest in these oil leases?

A. All we are taxed on; we pay taxes on our gross production; we pay taxes on our gross receipts, on the gas we produce; on the gas going through the line and on the line it goes through. There isn't anything we don't pay a tax on.

Mr. West: What consideration do you get for this service you make to these oil drillers?

A. We charge a flat rate, *abribrary*; started eight years ago when the gas business was new and we never raised it on them.

Q. That is the business you have made a loss of \$5,000 or \$10,000 on?

A. Yes sir.

Q. What other consideration do you get, why do you keep on doing it?

A. The other consideration—we are interested in all the leased that those lines run to.

Q. Can't you approximate the value of that service to those leased you are interested in?

A. You could as well as I can.

Q. We have done it and you must show us where we are wrong.

A. I claim that at least 85 per cent of the property returned in our sworn statement we are not taxable on, because we are not a public service corporation as to the service to these men who are producing wells on the lease. We are acting under a grant from the

United States government under the act of Congress. We  
191 are acting under the rules and regulations of the department.

It may be as to Avant and Big Heart that we might be considered a public service corporation, but as to this other, I submit we are not a public service corporation and subject to no taxes. Surface pipe lines that run from oil producers' fields are not to drill wells but develop the territory. I submit to this Board that at present it should not be taxed.

Mr. Cruce: Do you think it should be taxed locally?

A. Yes sir. We pay taxes locally and submit our property locally.

Q. Have you rendered that locally?

A. No, because it didn't come up until this meeting before this Board. It didn't come up until I was analyzing the situation with reference to presenting this to you. We put in such property as we could. This line runs to our own property. There is \$7,000 worth that should not be returned, no matter how you view this.

Q. Does your company own any property outside of Oklahoma?

A. No sir.

Mr. West: You say you furnish gas to the Osage?

A. Yes sir.



Q. What is that worth?

A. It wouldn't be very much that we do serve. I could get a list of the number. Fifteen or twenty families. That is under the original lease; we are bound to do that.

Q. Is that worth more or less than what you serve to the farmers?

A. It was worth less. We don't serve as many people there as we get receipts from.

Q. And the consumption by the free users isn't greater than that by the people that pay?

A. Yes sir.

Mr. Cruce: You say all your property is owned in Oklahoma?

A. Yes sir.

Q. I notice in your sworn statement returned to this Board that you are capitalized at three and one half million dollars, and you state it is all paid up?

A. Yes sir.

Q. What have you done with that three and one half millions?

A. That wasn't paid in. That was given before our time. The company was organized by promoters in New York. I represented the owners. I represented the old owners. I had to get it out of the hands of the promoters; they had against it  $3\frac{1}{2}$  million dollars. I got it away from them after litigation and then I paid out the stock to the owners of the property; that was the best I could do under the circumstances.

Q. How much was paid in stock?

A. Nothing paid in.

Q. Nothing paid in on the  $3\frac{1}{2}$  million dollars?

A. No, the leases were turned over. I have made a statement at length of our position in this matter before the Board and I have covered that capital stock business. The capital stock far exceeded of course the value of the lease, but it was not our deal and it was not the old owners' deal; that was the reason I happened to become first connected with the property was to get it out of the hands of these people.

Q. How much do you figure your property is worth?

A. As I was going to say, in 1909, the first part of 1910, that field we thought had considerable value, but these dry holes has changed the status of the whole situation. I might best answer you by an incident. I have fifty thousand shares of stock which I tried to sell for fifteen cents for eight months. There is no market for the stock. Those things that there isn't any question about we can all discuss openly. The company has no secrets. I know all about the business of the company. I am a director in the company. If you have any questions to ask I would like to answer them now.

Q. What do you consider your property worth?

A. I gave you an incident; it went to show that was the best way I could explain it. I think it ought to be worth \$500,000.

Mr. West: You mean oil and gas?

A. It expires in a year—in five years. If you gentlemen will understand and go into this in detail and not let me forget incidents of that kind you will see the reason for it. In 1910 and 1909 I

bonded it for \$300,000. I couldn't sell a bond because it expired in five years without any right of renewal.

Q. You mean your lease expired?

A. Yes sir.

Q. Who have you got your lease with?

192 A. The United States granted it and our business is mostly with a tribe of Indians on the Indian Reservation.

Mr. Harrison: You haven't got the usual form of lease?

A. No sir. This is a special lease granted by the Act of Congress, March 3, 1905, and that is the reason why I claim the service under that lease under the rules and regulations of the Department of the Interior is not subject to the jurisdiction of this Board. I don't think the Corporation Commission could lay down any rules with regard to the service.

Mr. Cruce: You never sold any bonds?

A. No sir and I tried for quite a little time. There is no question about this because I know what the condition of the property is thoroughly.

Mr. West: What is the business of the Ochelata Gas and Water Company, what ought it to be worth?

A. We haven't got a cent out of that for a year.

Q. Why?

A. Because it is defunct and we would stop if it wasn't for the people in Ochelata. We only get \$1,000 a year proceeds any way.

Q. You mean that thousand amounts to \$100 a month?

A. Yes sir.

Q. It ought to be worth that ought it not?

A. Yes, it ought to be worth that much. You understand this line is so long it requires a good many men on it.

Mr. Cruce: What are your expenses?

A. The gas side of it?

Q. Yes sir.

A. The expenses of the oil would be enormous because we are drilling wells all the time. You take a lease that produces \$150,000 in a certain length of time, \$150,000 on the right side of the ledger and if they drill thirty wells in the Osage that would be \$150,000. The expiration of the lease on that situation is what hurts. Where there is a sub-lease that is very valuable that goes into the market and is sold today; there are some sub-lease companies that are richer than we are. I think there is one section down here that is twice as rich as the Indian Territory Illuminating Oil Company.

Mr. West: Are they furnishing gas to any one?

A. No, but if we furnish it it ought not to be subject to a burden; it ought to be fostered.

Q. You do act in a public capacity towards a business of \$4,000 a year to Avant and Big Heart?

A. We haven't got a franchise. I don't admit it at all. I think we could pull our lines out of there in a minute and the State Corporation Commission couldn't interfere with us.

Q. Suppose then you have a business of a public character towards Avant and Big Heart which you don't agree to, and \$1200 for

furnishing gas to some farmers, I don't know whether you agree to that or not, and \$1200 a year to Ochelata; it ought to be worth that much. Have you any other business of that character, that is, like the service you are giving to Avant and Big Heart, the Farmers and Ochelata?

A. No. The Bartlesville, I mentioned that before, the Bartlesville Oil and Gas Company about \$200 a month now. Through this three inch line that runs up here about 25 miles.

Q. How about this Osage, is that worth half as much as you give to the farmers?

A. I suppose it is just about.

Q. On our theory all of these five, the Avant and Big Heart; the farmers, the Bartlesville Oil and Gas, the Ochelata, and the Osage Indians, we believe is a public service business and subject to assessment by us; on that basis it would amount to about a business, in the neighborhood of \$10,000 a year, \$9,400.

A. We are taxed again by the State of Oklahoma under another law.

Q. What ought that business considered in that way be worth?

A. Well, that business isn't worth anything.

Q. You think that is worth nothing?

A. No.

Q. Are you answering my question? Do you mean to say that if you had a public business—

A. You are stating a hypothetical case.

Q. On our theory it is.

A. I haven't any idea what it would be worth.

193 Q. Suppose those five were worth ten thousand, what ought that business to sell for?

A. I haven't the least idea.

Q. Do you want to offer any evidence on that?

A. Not on that hypothetical case, no.

Q. What per cent of your entire business is your gas business?

A. I figured it up, about 1/12 I think counting receipts.

Q. Well I mean the business, of course it is a difficult thing to compare a gas business to an oil business, but suppose you instead of figuring on receipts figured on expenses, of your total expenses, what are your expenses in your judgment on the gas business compared to your oil business?

A. Well I will let Mr. Leach answer that.

Mr. Leach: I can answer exactly what the expenses are on the gas business. I could not answer just exactly the cost on the oil business.

Q. I am trying to get information as to how to compare the gas business with the oil business. Mr. Brennan don't care to offer any evidence as to the value of your gas business, so there are three ways I can get at it. Either the receipts, the expenses or the investment. Do you know any other way of making a comparison?

A. I don't understand you.

Q. I think this Board has the duty apparently of making a

division between the value of your property that is used for a non-public business and what is used for a public business.

A. Yes sir.

Q. And you won't give me any information direct upon the hypothesis I think we will adopt, that your gas business is public, therefore that forces me to resort to some arbitrary indication and the only way I know of is to divide it either according to receipts, expenses or investment. I want information on those three heads.

A. If you are going to assess this business as a gas business which you may if you choose perhaps, the question is what is that business worth, not what you would place upon it by a suspicious guess; you don't have to guess at it as the evidence is here, what it is doing, what the expenses are and what the receipts are; also the gas lines, there is your statement of receipts which we will furnish more fully.

Q. You are furnishing gas daily to a business that ought to receive about \$10,000 a year, gross, isn't that correct?

A. Gross, oh yes.

Q. I have asked you what that business is worth?

A. You can't tell what the business is worth by giving the gross receipts.

Q. On the contrary I have always understood it was some indication.

A. It is some, and in the use of the word "some", you are quite correct.

Q. I also believe that the amount of investment is some indication.

A. I will give you the original cost of these lines, labor and expenses, and all that as submitted to the Corporation Commission.

Q. Now I want to separate the oil from the gas business?

A. We are not making any statement on the oil business.

Q. The understanding is that this statement you are making is solely on the gas business?

A. These gas lines on this map, the greater part of which I claim is not under the jurisdiction of this Board in any event. I think that adds up in Avant, \$1625; in Big Heart, \$4,137; buried, and all the rest of the lines on the surface of the ground, \$70,918. The original cost, labor and everything of all these lines was about \$77,000. They were put in at an early date.

Q. In addition to your gas lines what other investments did you make in gas property, producing wells or anything else that adds to the gas business?

A. We bought over a great many producing wells.

Q. What investment did you make in gas properties outside of gas pipe lines.

A. If you are going into that I would like to put Mr. Leach on the stand.

Q. You can't answer that question?

A. No. It is some considerable figure you know; if I remember it was \$18,000 in one year.

Q. What is the ratio as near as you can state it of your investment comparing the entire oil and gas properties, both pipe lines and other things?

A. There is no comparison.

194 Q. What is it?

A. I think it was about  $1/12$ , I told you before.

Q. That is the best estimate you can give?

A. Yes sir; I tried to figure with it day before yesterday.

Q. The ratio of gas investment compared to oil investment is what?

A. I say I figured it out a day or two ago and I figured it  $1/12$ .

Q. And then you stated to Mr. Leach that you included the gas investment which would be  $1/5$ ?

A. No, I didn't say that. You didn't get it. I said if I included the original investment it would be  $1/50$ .

Q. What was the whole investment?

A. The whole investment was the transfer of this lease for the stock.

Q. How much was it?

A. How much was what?

Q. The whole investment?

A. The lease for the stock.

Q. You say the gas investment is  $1/50$  of the whole?

A. I didn't say so. I said if certain things were included. You have brought up a discussion between me and Mr. Leach.

Q. I want to get information. You say that your gas investment is  $1/50$  part of something; I want to know what that something is.

A. I suggested to Mr. Leach if you included the original investment taking the oil properties that were transferred over for the stock, the gas investment would be much less as compared with the oil investment originally.

Q. Than it is now?

A. Yes sir, because the lease is rapidly expiring and the value is rapidly depreciating.

Q. What was the original total investment down to the present time?

A. What do you mean by that down to the present time?

Q. You don't want to answer that question?

A. Certainly I do. I want to know what you mean by original investment down to the present time.

Q. You said to Mr. Leach if you included everything that was invested down to the present time it would be much less. I want to know what that investment was from the beginning?

A. I think I have stated that over and over again.

Q. You don't care to repeat it?

A. No.

Q. What is the ratio of the earnings, receipts, I mean by earnings, gross earnings, receipts of the gas investment compared to the oil investment from the beginning?

A. From the beginning I couldn't state what it was, but we can give you those figures, but it is  $1-12$  on one year's.

Q. One twelfth now?

A. I did figure it from the beginning at one twelfth.

Q. Then the only comparison I can gather from your statement

is on the point of receipts. I can get from you no definite statement as to the ratio of expenses. You say that Mr. Leach can give that. I can gather from you no definite statement as to the gas investment compared to the total investment in figures?

A. Yes sir.

Q. You want to leave it that way in my mind?

A. Yes sir.

(Witness excused.)

MR. CHARLES F. LEACH, after being duly sworn, made the following statement.

By Mr. Brennan:

Q. Where do you reside?

A. Bartlesville.

Q. Are you associated with the Indian Territory Illuminating Oil Co.?

A. As its manager.

Q. How long have you been manager of that company?

A. Since a year ago last September.

• Q. Prior to that time were you engaged with that company? In the field?

A. I was.

Q. In the Osage Reservation?

A. Yes sir.

Q. What was your business prior to that time?

195 A. In charge of the Osage Agency in the Indian service.

Q. Do you know that field covered by the map before us thoroughly?

A. Yes sir.

Q. Did you hear some of the questions asked me by General West?

A. I did.

Q. Have you with you figures showing the comparative total expenditures of the oil department as it is from the total expenditure in the gas department?

A. During what period?

Q. From the beginning?

A. I have the expenditures on gas lines for the last year but not a definite expenditure of oil for the reason I didn't contemplate the oil expenditures would be taken up.

Q. Could you secure the statements for the General from the books and forward it here

A. I could do that.

Mr. West: At the present time can you estimate them?

A. I would estimate them that the oil expenditures were in the neighborhood of \$7,000 a month?

Q. And the gas?

A. The gas expenditures, well I think about \$2500 a month; about \$3,000 a month.

Q. And the oil about \$7,000 a month?

A. Yes sir.

Q. Can you give me an estimate of the oil investment?

A. I cannot, no sir.

Q. Does it show in the books?

A. It perhaps does. I suppose it could be ascertained by going through the books for the various years.

Q. That is a joint investment; the two businesses are managed together aren't they?

A. They are managed together, but we keep the expenditures and receipts separate, that is, I might say, maintenance expenses, office expenses for instance, manager's office, help, and such items as that, general expenses.

Q. What do you do with that?

A. That is the only common expense.

Q. In this figure you gave me of \$7,000 a month does that include expenses for general management?

A. Yes sir, that includes the whole thing.

Q. And this figure \$3,000 a month for gas business, does that include any expense for general management?

A. That expenditure, no it didn't.

Q. It didn't?

A. It did not, no sir. That statement, that was constituted of \$14,873 for maintenance of gas, labor, etc. and 28 per cent of the original cost of the wells for gas; that was arrived at in this manner. We took a test, a careful test of the pressure and volume of the wells and every day or two I would take another test showing that these wells had depreciated 28 per cent; deducting 28 per cent of the actual cost of these wells I found it to be \$6,884.

Q. What is the cost of your gas wells?

A. I haven't that here.

Q. You took 28 per cent of some figure, what was the figure you took 28 per cent of?

A. That \$6,887 is the result of 28 per cent of the wells that were in service from which the gas was used.

Q. By finding out what figure 28 will produce \$6,000 then it is clear you at least get the investment of these gas well- that are now in use don't you?

A. Yes, sir.

Q. Can't you give me that figure then at least that far?

A. That can be worked out; that is a matter of computation and can be made at any time.

Q. What part of this \$7,000 a month you attributed to the whole business is based on the same theory—same method as the \$3,000 a month that you attributed to the gas business? In the \$7,000 a month you include general expenses; in the \$3,000 a month you don't include general expenses?

A. No sir, none of the officers' expenses.

Q. Then tell me how much the oil business would be a month on that basis?

196 A. I intended to make myself clear on that basis if I didn't. Well, I would prefer to make that from the books



rather than make the statement for the simple reason I haven't those figures.

Q. We have to settle these things and have to settle them now.

A. I didn't know you were going to take up the oil business.

Q. As an accountant you have had some experience?

A. Well, I am not the accountant of the company.

Q. In the absence of other evidence, isn't a division according to expenses some indication of relative value?

A. Not necessarily so.

Q. I didn't say necessarily so. I said in the absence of other evidence it has some indication?

A. No.

Q. All right.

A. I want to explain my position for the reason that the gross receipts from gas isn't any indication of the value of that property for the simple reason that the expenses besides the gross receipts, will in the case of the whole production show the reverse; one shows a profit and the other doesn't.

Mr. Brennan: it isn't fair nor logical in ordinary cases, the examination you are pursuing because the most of our oil receipts are from royalties from which we have no expenses and from which we have taken out over \$600,000 in eight years. It is net royalty. There are no expenses connected with it so far as we are concerned.

Q. Up to this time I haven't asked you a single thing about the receipts from oil.

Q. How long have you been manager of this company?

Mr. Leach: A year last September.

Q. And have had intimate connection with its affairs?

A. So far as the physical manager of the property.

Q. For the purpose of dividing the value of these properties you can't give me any further information as to the ratio of the expenses in the two business-?

A. No.

Q. Can you give me any information as to the ratio of investment in the two businesses. Can you give me anything as to the total investment in either business?

A. Only what you have before you.

Q. What is that?

A. That affidavit.

Q. I want you to state it?

A. I don't know.

Q. Will you state now as general manager, will you estimate what the total investment in the gas business is; what the total investment in the oil business is and the ratio of the two?

A. The original?

Q. I said total?

A. If you make it total in the gas business I would state according to my statement returned to the Board of about \$53,000.

Q. Is the total investment in the gas business?

A. Total value.



Q. I want to know what is the total investment?

A. In the pipe lines?

Q. I mean in the gas business?

A. Couldn't do it.

Q. Can you give me the total investment in the oil business?

A. No sir.

Q. Can you approximate it?

A. I wouldn't attempt to.

Q. You won't do it?

A. I don't mean that I will not do it. I mean I can't do it upon the figures before me.

Q. Do you mean you offer to do it hereafter?

A. Yes sir.

Q. You do offer to do it hereafter?

A. So far as I can obtain it.

Q. Well then I will not question you any further until you are further informed. You understand me well enough to know that where you have a mixed business, that is a business that operates two different kinds that ordinarily speaking it is fair to divide the one according to either expenses, receipts or investment and I want to see it in all three ways and any other ways you know of and recommend as being fair.

197 A. It doesn't occur to me that the principal of taxation is upon what a thing costs. It may have been worn out. These pipe lines are not worth as much as they were six years ago.

Mr. Brennan: I would like to submit a statement of the receipts and disbursements of the gas business for the last five years from the books of the office.

(Statement pertaining to the Gas business of the Indian Territory Illuminating Oil Company covering the period from Jan. 1st, 1907 to and including May 31, 1911, offered in evidence and marked Indian Territory Illuminating Oil Company's Exhibit B, and made a part of the record in this case.)

**"Indian Territory Illuminating Oil Company.**

*Statement Pertaining to Gas Business Only, Showing Receipts from the Sale of Gas and Disbursements in Connection Therewith, Covering the Period from January 1st, 1907, to and including May 31, 1911.*

**Yearly loss.**

Receipts from sale of gas	Year 1907....	28,415.18	.....
Disbursements	Year 1907....	43,330.33	15,915.15
Receipts from sale of gas	Year 1908....	30,409.87	.....
Disbursements	Year 1908....	43,277.88	12,868.01
Receipts from sale of gas	Year 1909....	28,132.94	.....
Disbursements	Year 1909....	37,207.79	9,074.85
Receipts from sale of gas	Year 1910....	35,947.45	.....
Disbursements	Year 1910....	41,700.89	5,753.44

Receipts from sale of gas January		
1 to May 31, 1911.....	21,579.99	.....
Disbursements January 1 to May 31		
1911 .....	28,998.64	7,418.65
Total Disbursements.....	194,515.53	50,030.10
Total Receipts.....	144,485.43	
	50,030.10	
Total loss .....	50,030.10	50,030.10

Mr. West: Will you submit a statement of receipts and disbursements of the oil business for the same period?

Mr. Brennan: Yes, sir.

(Affidavit of Mr. Mortimer F. Stilwell, offered in evidence and marked Indian Territory Illuminating Company's Exhibit C. and made a part of this record, a copy of which is as follows:)

"To the Corporation Commission of the State of Oklahoma:

STATE OF OKLAHOMA,

*Washington County, ss:*

Mortimer F. Stilwell, being first duly sworn, doth depose and say: That he is the Secretary and Treasurer of the Indian Territory Illuminating Oil Company; that he was formerly the manager of said Company and became interested in the company as manager about 1903. That he has examined the map drawn and submitted

by ———, an engineer for said company and deponent  
198 says that nearly all the buildings of said lines to producers and drillers was built under his supervision. That deponent has made a careful examination of the books of the company to ascertain the actual cost of said lines per mile but that there has been great difficulty in the business for the reason that these lines are small superficial surface lines and have been moved from time to time to accommodate drilling operations.

That the statement following is true and correct as to actual cost per mile of the said lines of the Indian Territory Illuminating Oil Company shown on the map so submitted by said ———, which includes all connectings, fittings, regulators and all material used in connection with the lines:

That said map shows all of the lines of said company and this statement includes all said lines.

That said Indian Territory Illuminating Company has no real estate except the lease granted by the United States Government over part of the Osage Reservation, except two lots in Bigheart, on one of which is erected a dwelling and on the other a barn and small office, both for the use of one of the line foremen. Its rights of way are granted in the original lease. Said company has no station grounds, no tanks, farms and no pumping stations. Said map designates the size of mains and lateral lines of said company

and shows the length, size and kind of said main or lateral lines. The said company leases no lines from other companies, or individuals.

## In Avant.

Cash per M.

1.62 miles 2"	(3.5 # buried at	1003.20 (19c.)	1625.18
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## In Bigheart.

Per M.

Pr. ft.

.48 Miles 1"	(1-5 # buried at	633.60 (120.)	304.13
.78 " 2"	(3.5 # " "	1003.20 (19c.)	782.50
1.17 " 3"	(7/54 # " "	1795.20 (34c.)	2100.38
.40 " 4 7/8"	(13 # " "	2376.00 (45c.)	950.40

## Fifty Nine Gas Line.

29.90 miles 2"	(3.5 # ground at	6.33.60 (12c.)	18944.64
29.50 " 3"	(7.54 #) " "	1478.40 (28c.)	43612.80
2.21 " 4"	(10.66 #) " "	1848.00 (35c.)	4048.08
1.80 " 5 5/8"	(16 #) " "	2376.00 (45c.)	4276.80

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 70918.32

These lines were put in from time to time through the course of six or seven years and were extended and later taken up, moved, etc., from time to time as the development of drilling operations required. Said Company has no substantial large pipe line that will accommodate any large quantity of gas for any great distance. There is no permanency to the lines embraced under the title "Fifty Nine Gas lines." All our rates are flat rates except where we furnish pumping stations on big oil lines, and the metre on the lines of the Bartlesville Gas and Oil Company.

(Signed)

MORTIMER F. STILLWELL.

Subscribed and sworn to before me this 24th day of June, A. D. 1911.

(Signed)

OTTO MASSEY,

Notary Public.

My commission expires March 4th, 1915.

Mr. West: You are willing to show us the figures, the receipts in each business, why do you object to showing the figures of investment in each business.

Mr. Brennan: We come here with all the figures in the gas business; if you want all these other figures we will submit them to you. You have been told by the witness again and again that he hasn't got the figures before him. There isn't any figures you can't have.

Q. There is only one thing I can see before this Board; you have testified in your judgment the business is worth \$500,000?

199 A. Several of our companies that are worth probably millions of dollars we have nothing to do with. The sub-lease is an absolute transfer to them and formally approved by the Secretary of the Interior. Under the law which I called your attention to they are separate and distinct from us as if we were in a separate state. And our 1/24 is paid by the pipe line company separate from them. One section alone I think would be worth over a million dollars that I know of. We have nothing there at all, and we don't even have a royalty from that. That happened to be the only section that was based on the one-eighth royalty. The total royalty paid by the sub-lease is 1/6. The Indian Territory Illuminating Oil Company separate from 30 or 40, or 50 oil companies, it is taken up and put on the carpet as to the value of its property when there are hundreds of companies doing business right under it.

Mr. Cruce: We are trying to get all of them here?

A. This is a public service investigation; they are not public service companies.

Q. I notice — this statement you have been having an annual loss running from \$5,753 up to \$15,915?

A. Yes, sir, on this gas business.

Q. And that that loss has been kept up now for five years totaling over fifty thousand dollars?

A. It has been kept up for eight years.

Q. How does your company live under that sort of business?

A. I went over that very carefully. These lines were put in for the purpose of getting the leases; we are interested in all these leases to which these lines run. It is sixty miles from the north end of the lease to the south end. We are interested in these leases. A man say comes over here and takes a section and he wants to drill a well and he says "We will do it if you will give us gas."

Q. Is this company interested in that?

A. Yes, sir.

Q. When you get an interest in that and get your royalty where do you put that; don't you credit any of that up against this loss you are entailing?

A. No.

Q. Where do you put that profit?

A. That is in the oil.

Q. In other words you charge up your expenses against your gas and credit profits to the oil?

A. Yes, sir. It would be hard for me to ascertain what it would be. That is the reason why I suggest to the Board that that business of moving those surface lines to one producer over here and then if he gets a dry hole we have to move it two or three miles running to properties — which we are interested, that it isn't a public service business.

Q. You contend we have no jurisdiction over these lines you lay out to those gas wells?

A. Yes, sir.

Q. Have you returned that to the local assessor for taxation?

A. We returned it to you. That question of analysis did not occur to me until afterwards, this last week; if it militates against us to return it to you we are willing he should tax us.

Mr. West: How much ought you to be assessed at?

A. All together?

Q. What ought this Board to assess you at?

A. I don't think that you ought to assess those lines that go through those producers.

Q. What ought this Board to assess; what property that belongs to your company?

A. If anything in Avant and Bigheart.

Q. What ought we to assess that at?

A. We will stand for any fair taxes. We won't question any amount.

Q. What ought that property be assessed at in Avant and Bigheart?

Mr. Brennan: What did you say you figured it at?

Mr. Leach: Total receipts?

Mr. West: No, net receipts.

Mr. Leach: Without taking into account the cost of gas it would probably amount to about \$1,200 to \$1,400.

Q. Taking into account the cost of gas what would it amount to?

A. Fifty per cent is usually considered, fifty per cent of the gross receipts is for the gas; where it is furnished on that kind of a basis.

Q. What do you think the property in Bigheart and Avant should be assessed at?

Mr. Brennan: I haven't the least idea, General.

200 Q. I have asked you three or four times, will you state a figure?

A. But I don't know.

Q. You have been given an opportunity haven't you?

A. Yes sir.

Q. How about the property that furnishes these farmers with gas. Will you state a figure for that?

A. I have given you the whole property.

Q. How about the property that furnishes Ochelata, will you state a figure for that?

A. No.

Q. How about the property that furnishes the Osage Indians, will you state a figure for that?

A. That is the same property.

Q. Will you state a figure for it?

A. No.

Q. How about the property that furnishes gas to Bartlesville, you will state a figure for that?

A. That is the same figure.

Q. Will you state a figure for it?

A. No. I don't want to invade your province entirely.

Mr. Cruce: Do you withdraw this first statement you filed with the Board or do you want to stand by that?

A. No, we didn't withdraw it. I only wanted to call your attention to the letter that went along with it.

Q. You have listed your property there at fifty two or fifty three thousand dollars?

A. Yes sir.

Q. And now you say the Board will not tax all of that property?

A. No.

Q. But you refuse to say what the property is worth that the Board should tax?

A. I told the General if the property was assessed at more than that return I wouldn't kick. We haven't kicked on our taxes. Why do you want some statement from me as to what I would do if I was in your place.

Q. I thought you came here to tell us what your property would be taxed at?

A. No, I came over to object to the assessment made in our absence.

Q. You don't propose to say at all what your property should be taxed at?

A. I covered the ground very fully.

Q. Probably I didn't hear you but I have never understood that you ever told this Board what your property should be taxed at?

A. Yes sir, we have got our returns here sworn to. They are before you.

Q. Is that what we should assess your property at, according to this report here?

A. It is the property in Avant and Big Heart that should be assessed if anything and I *probably* deny you have a right to assess it as a public service corporation at all. First I question the right of the Board to assess the company at all as a public service corporation; second, if it did have that right it should not assess the lines that run to the drillers; third, I introduced in evidence a statement from an expert showing how much was in Avant and Big Heart; why do you want my evidence after I have introduced that.

Mr. West: You say you have lost for eight years?

A. Oh yes, I know that for every month for eight years.

Q. How much have you lost?

A. I don't know how much but I have furnished statements here in this matter. That will show more clearly than my testimony.

Q. Will you call my attention to the particular figures. I haven't any information on that subject that I know of.

A. All those figures on Exhibit B.

Q. Name them. I want to get at how much you say you have lost every month for eight years. I want to know how many dollars you have lost.

A. This statement shows a net loss for five years of \$50,000.

Q. For eight years how much is it?

A. We will furnish you the statement for the other three years.

Q. We have got to go ahead now. Is it about the same rate?

A. I should judge it must be.

Q. If this was \$50,000 for five years; about \$80,000 for eight years?

A. Yes sir.

Q. Did you make that back off of your oil property?

201 A. I don't know whether we have made it back or not.

Q. But you have kept on doing it for eight years?

A. Yes sir, we kept on developing those properties in that way.

Mr. Cruce: Are you the man who made the original return Mr. Leach?

Mr. Leach: Yes sir.

Q. Is this affidavit of yours correct?

A. I think so in connection with my explanation of it.

Mr. West: Will you object if we assess you at \$300,000?

Mr. Brennan: Yes sir.

Q. I want to explain to you why I suggest that. You testified that the entire property is worth half a million dollars?

A. I testified that in my opinion it ought to be worth that.

Q. Now your manager has shown that there is an expense of \$3,000 a month to the gas business and \$7,000 a month to the oil business and in the oil business is included general expenses, the amount of which I can't get from him and in the absence of other light I am inclined to believe it is half and half. Now then if I divide the property according to expenses the gas property ought to be worth a quarter of a million dollars.

A. You are not doing that correct because I told you that most of the oil business was receipts from royalties amount- to a great deal with reference to which there was no expenses.

Q. Amounted to how much?

A. Well in the last eight years about \$600,000.

Q. \$600,000 in eight years?

A. It is running over that now. It is running \$125,000 a year. That is net profit.

Q. How much is that from wells developed, opened up by your gas system?

A. Probably half.

Mr. Leach: Not hardly.

Mr. West: As much as \$40,000 a year from wells that were opened up under your gas system?

Mr. Brennan: Perhaps so.

Q. In this \$40,000 a year in the wells developed by your gas system how much of that \$40,000 shall we estimate is received due to the fact that you have been furnishing them gas?

A. I don't know. Could you think of estimating that yourself if you knew all the facts?

Q. I don't know the facts.

A. We simply furnish the fuel on the lease. It might be furnished from some other source or some other way or the power might be given in some other way and if you furnish the fuel to a



lease and it produces 100 barrels a day how much of the 100 barrels a day would come through your efforts.

Q. I would judge from your case that at least ten thousand a year because you wouldn't keep on losing it unless you are making it back. We can identify at least  $\frac{1}{4}$  of it coming back to you in that way. I want to know how much more. You have no answer to make to that?

A. Oh pshaw.

Q. Have you any other answer?

A. Nothing unless you get my photograph in there.

Q. Is there anything else—you see the line I am trying to follow—is there any other information I ought to have either on this line or any other line?

A. We offered you certain information which we are going to send to you from the oil—a copy of our books.

Q. Is there anything else you can furnish us now?

A. Nothing that I have here.

Q. Is there anything else you care to present now?

A. No, I don't think so.

Mr. Harrison: This is an incorporated concern isn't it?

A. Yes sir.

Q. What was the purpose for which it was incorporated?

A. For the purpose of developing oil territory and gas territory.

Q. It is not for furnishing gas in any instance?

A. I will send you a letter with reference to that.

Mr. Cruce: You keep the books do you Mr. Leach?

A. Well no I don't keep the books. We have a book-keeper.

Q. Now this statement shows disbursements for the year \$41,780. Can you tell the Board what items make up that \$41,000?

A. I could not. I wasn't in the office when that was made up.

202 Mr. Brennan: When this letter was sent in we went on drilling those wells and we got those dry holes.

Q. In your letter of explanation you say against this \$35,947 we have \$14,714 as cost of maintenance; is that the cost of maintaining your gas plant?

— Leach: Yes sir.

Q. If you didn't charge all this extra stuff up against it you would have a profit then of over \$21,000?

A. Taking no account of the actual cost of gas. You see our gross receipts are not profits. It would be proper to allow something for the cost of gas.

Q. Do you think it would be proper for a farmer out here if he went out and spent \$5,000 this year and didn't raise anything to charge that up against his farm?

A. That is a different situation. If you are selling a property that cost you a certain price say you are selling it for fifty cents and it cost you 25 cents, then your profit would only be the difference between your cost and your gross receipts. Now this gas cost us something. It cost us something originally and there should be some charge against that. As I stated in my other testimony in

relation to Bigheart that it is very customary to allow fifty per cent for the cost of gas against the gross receipts. In other words it is a very good rule that gas companies transporting gas furnished to local companies at all the way from forty to sixty per cent of their gross receipts.

Q. How long do your gas wells last?

A. About four years.

Mr. Brennan: All of that?

A. I was going to explain that. That will depend somewhat upon the location of the gas well. If they should be located in among developments where oil is being found it will run out so much quicker.

Mr. Cruce: Now you say by careful computation we find the wells in service to operate this gas deteri-rated during the year 28 per cent, and that 28 per cent of your original cost. That amounted to \$6,874 so you charged that against it?

A. Yes sir.

Q. Do you include in that the cost of your pipe?

A. Yes sir.

Q. Is that pipe worth anything?

A. Well, yes, it is worth something.

Q. Did you take into account in that, in this charge?

A. No. In addition to this we spent over \$15,000 in drilling wells to increase our gas production.

Q. When you have charged all of that in you have \$36,758 of expenses against \$35,947 of receipts or a difference of about \$800. This statement here shows \$5,700.

A. That statement was prepared under the direction of Mr. Brennan. I suppose that included the office expenditures.

Mr. Brennan: That included the wells drilled when you wrote your letter. We included it right down to date.

Mr. Cruce: How many months has that been you have been spending this extra \$5,000. When was this statement made up?

A. This statement was made up a few days ago.

Q. And this other was made up?

A. I think it was in March.

Q. That is about five months? Haven't you received anything at all during that five months?

A. Yes sir.

Q. You lack 46 cents showing as much receipts in this last statement as you did in the former?

A. I can take that back and explain it all.

Mr. Bryan: How many wells have you drilled in the past three months?

A. Two I think.

Q. When you drill these wells if you happen to strike oil what do you do with that, charge the expenses of that to the oil company?

Mr. Brennan: That belongs to the other company.

Mr. Cruce: And the expense of it goes to the other company?

A. Yes sir.

Q. If you go out drilling for oil and strike a dry well do you charge that up to this gas account?

Mr. Leach: No. We have three strings that we have been running regularly for a year that are drilling for gas and we are not making any locations where we think the prospects are in favor of  
203 oil. They are primarily operating for gas; however, if we accidentally open a pool of oil we wouldn't abandon a well on that account but the probabilities are it would be turned over to the party holding the oil right and he would reimburse us for the amount we had expended.

Q. On that one well?

A. On that one well.

Q. All of the profit you would get out of that would go to the oil and all of the loss you would entail would go to gas?

A. But the oil wouldn't belong to us. You see in a large per cent the oil belongs to the sub-lessee, the gas belongs to us. We drilled jointly on these leases; the man who holds the oil right if he drills a gas well he turns it over under the terms of our lease to us at actual cost, and if we drill an oil well we turn it over to him for actual cost.

Mr. Brennan: It is all sub-leased with the exception of 32 which has about 1200 acres; there are about 20,000 acres over here (referring to map) which belongs to the company; we drill on sub-leased property. The oil wells belong to the sub-lease company.

The following statement was read into the record regarding the Indian Territory Illuminating Oil Company's property being assessed by the State Board of Equalization:

"To the State Board of Equalization Having Power to Assess Public Service Corporations under the Constitution:

In the Matter of the Assessment of The Indian Territory Illuminating Oil Company.

The Indian Territory Illuminating Oil Company respectfully insists before this Honorable Board as follows:

1st. That no part of the property of said Company is assessable by this Board as being used in Public Service, and that in the conduct of no part of its business is said Company a Public Service Corporation.

2nd. That the business of said Company is confined to that part of Oklahoma which is known as the Osage Reservation, being the property of the Osage Tribe of Indians; that the business of said Company is wholly conducted under and by virtue of a deed, license or grant by the United States Government to said Company, renewed by Act of Congress of March 3rd, 1905—specifically mentioning said Company by name and endorsing and continuing its said lease or grant; that said lease is for the production of petroleum and natural gas on said reservation only, and that the Osage Tribe of Indians, as a tribe, is a party of the first part to said lease, and that said petroleum and natural gas is wholly tribal property, was tribal property at the time of said grant, and by the Osage Allotment Bill

of June 28th, 1906, was ordained to be continued as tribal property for twenty-five years; that all the operations of said Company on said reservation, under and by virtue of said lease, are by virtue of said grant, and the rules and regulations of the Honorable Secretary of the Interior of the United States Government, a copy of which is hereto annexed and made a part hereof; and that the officers and agents of said United States Government, together with their Inspectors of Gas operation, are actually in charge of the field operations of said Company, representing said Government as the guardian of said tribe of Indians, and that this company is subject to the provisions and conditions of said lease, and to the rules and regulations of the Federal Government in that regard. A copy of said lease or grant has heretofore been filed with this Honorable Board in these proceedings.

3rd. That the small surface gas lines embraced in this inquiry and belonging to the Company are a very small part of the business of the Company—its said business being primarily, and almost wholly, the production of petroleum or oil. Said lines were built and extended from time to time on the surface of the ground for the purpose of temporarily conveying gas to producers of oil—all of whom were, and are, sub-lessees of this Company, and in each of which said sub-lessees this Company has always had, and now has, a substantial interest—and the furnishing of said gas was for the purpose of promoting the development of the property of this Company, as aforesaid, and not to realize a separate profit from the conduct of said gas business; that said lines are taken up and moved from time to time according to the exigencies of the business of oil development or the drilling of wells. It is a fuel business, to supply power in the drilling of wells, for which a flat rate is charged entirely inconsistent with the quantity of gas used.

4th. That said business has always been, and is now, conducted at a loss by said Company, and would not be carried on were it not for the interest that said Company has in the said sub-leases reached by said lines.

5th. That after said system was so instituted, from time to time this Company furnished the little town- of Bigheart and Avant with gas for domestic purposes, at the earnest request of the few inhabitants thereof. This Company has no franchise, permit or contract from or with said towns; that the furnishing thereof is a part of the same system or purpose as heretofore set forth, for the reason that said settlements, or towns, are located in and near the oil operations, and are settled by those who are interested in the drilling, or accommodate those who reside on the leases and are engaged in the drilling in various ways. Said towns are located wholly in the Osage Reservation, and the receipts from service therein are wholly insufficient to pay for the investment and cost of maintenance.

6th. That nearly four-fifths of the gas lines and property returned by the officers of this company to this Board is that which is embraced in the service of gas and drillers and producers of oil, and that said lines were erroneously included in the return, and the Company respectfully insists that, in any event, that part of said

lines which is used in the lease operations under the original lease should not be included as Public Service under the Laws of Oklahoma.

7th. That said Company also furnishes gas to the Ochelata Gas and Water Company, but that this Company does not serve the inhabitants of Ochelata, and does not conduct its lines in that regard beyond the line of said Reservation, but delivers said gas at the line, for the reason that said point is near one of said surface lines, but that no receipts have ever been received therefrom during the last year and more, and that this Company would not continue the same were it not for the resulting harm and suffering that might be caused the people of Ochelata.

Through these surface lines said Company also is now receiving about two hundred dollars a month for gas from the Bartlesville Gas and Oil Company.

8th. That no part of said surface line system could be used in conducting any substantial quantity of gas to any distance to furnish larger consumption -or cities.

9th. That except as aforesaid, the business of said Company is the production of oil itself and the obtaining of a royalty from sub-leases and from oil operations thereon; that such profit as the Company makes is derived wholly from its oil business, and that its capital stock represents its oil business, but that said capital stock has no market value, and has been offered as low as fifteen cents per share. That the capital stock of said Company does not represent an actual cash investment equal to the face value of the stock, but that said stock was issued to the former owners of the lease from the Government in payment for their properties, being said lease-hold.

10th. This Company respectfully insists that the sworn return to this Board should not be changed in any event and that the assessed value of the property, as herein indicated, should not be raised except upon evidence that said return is incorrect; and that said return was raised without notice to said Company.

11th. That the figures to which said assessment against said Company was raised are erroneous, inequitable and unjust to such an

extent that it will result in confiscation of the property of this  
205 Company if this Company were compelled to pay the taxes based upon said assessment, and this Company will be absolutely unable to perform the duties of said lease or contract with the United States Government, in the event that such taxes should be enforced or should be paid, and that, therefore, said tax would impose a burden upon Commerce with an Indian Tribe.

12th. That the value of the property of this Company, including all its oil business and properties, is far less than the figure to which this assessment has been raised. That the lease of this Company expires in five years, and there is no provision for a renewal thereof.

13th. That this Company is now paying, and has heretofore paid ever since Statehood, taxes on all its oil production, under the gross production tax in Oklahoma, and in the same manner it is paying, and has heretofore paid, a gross production tax on the gas as produced, and also a tax on the same gas when transmitted through pipe

es, and also a tax upon the same pipe lines; that every piece and  
t of said Company's property is taxed under some law of Okla-  
na, and that its gross receipts are reached by the gross production

4th. That such franchise, occupation and business as is owned  
engaged in by said Company is, by virtue of said grant, license  
lease from the Federal Government, and said franchise, right or  
upation can not be taxed by the State of Oklahoma.

(Signed)

JOHN H. BRENNAN.  
KENNETH C. CRAIN.

ATE OF OKLAHOMA,  
Oklahoma County, ss:

John H. Brennan, being first duly sworn, deposeth and saith that  
is a stock holder, a director of, and attorney for the above named  
Indian Territory Illuminating Oil Company; that he has read the  
regoing statement, knows the contents thereof, and that the mat-  
s and things therein set forth are true to his personal knowledge.

(Signed)

JOHN H. BRENNAN.

Subscribed and sworn to before me this, the 29th day of June,  
11.

(Signed)

EUGENIA DAVIS,  
Notary Public.

My commission expires, June 25th, 1914.

(The witnesses were here excused and no more testimony was taken  
the case of the Indian Territory Illuminating Oil Com-  
ny.)

6 Exhibit A of the Indian Territory Illuminating Oil Com-  
pany at the hearing of June 29th, being a map of that part  
Osage County, Oklahoma, comprised in the said Company's lease,  
a part of the record in the said Company's first appeal in the mat-  
r of its assessment, No. 2845 in the Supreme Court of Oklahoma,  
d cannot be duplicated in this record.

Witness my hand, this 30th day of October, 1911.

LEO MEYER,  
State Auditor, *ex-Officio* Secretary  
of the State Board of Equalization.

7 (EXHIBIT "A" TO STATEMENT OF JOHN H. BRENNAN.)

Regulations Governing the Leasing of Lands for Oil and Gas on  
the Osage Reservation, Oklahoma, Under the Act of March 3,  
1905.

The following regulations are hereby prescribed for the purpose  
of carrying into effect the provisions of the act of Congress approved  
March 3, 1905 (Public, 112), which provides:



That any allotment which may be made of the Osage Reservation in Oklahoma Territory shall be made subject to the terms and conditions of the lease herein authorized, the same being a renewal as to a part of the premises covered by a certain lease dated March sixteenth, eighteen hundred and ninety-six, given by the Osage Nation of Indians to Edwin B. Foster and approved by the Secretary of the Interior and now owned by the Indian Territory Illuminating Oil Company under assignments approved by the Secretary of the Interior, which said lease and all subleases thereof duly executed on or before December thirty-first, nineteen hundred and four, or executed after that date based upon contracts made prior thereto, and which have been or shall be approved by the Secretary of the Interior, to the extent of six hundred and eighty thousand acres in the aggregate, are hereby extended for the period of ten years from the sixteenth day of March, nineteen hundred and six, with all the conditions of said original lease except that from and after the sixteenth day of March, nineteen hundred and six, the royalty to be paid on gas shall be one hundred dollars per annum on each gas well, instead of fifty dollars as now provided in said lease, and except that the President of the United States shall determine the amount of royalty to be paid for oil. Said determination shall be evidenced by filing with the Secretary of the Interior on or before December thirty-first, nineteen hundred and five, such determination; and the Secretary of the Interior shall immediately mail to the Indian Territory Illuminating Oil Company and each sublessee a copy thereof.

The said act of March 3, 1905, renews and extends the—

said leases and all subleases thereof duly executed on or before December thirty-first nineteen hundred and four, or executed after that date based upon contract made prior thereto, and which have been or shall be approved by the Secretary of the Interior, to the extent of six hundred and eighty thousand acres in the aggregate \* \* \*

Section 1. The original lease and all subleases and assignments thereunder provided for by the act of Congress of March 3, 207a 1905, above referred to, are, when approved by the Secretary of the Interior, extended for a period not longer than March 16, 1916.

Section 2. All subleases or assignments made hereafter must be submitted to the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, for consideration and transmittal to the Department within thirty days from and after the date of execution of the instrument, and all such subleases and assignments which have been heretofore executed must be submitted to the said agent within thirty days of the approval of these regulations. No such sublease or assignment presented after the time herein designated will be received by the agent or transmitted to the Department or regarded as having any effect whatever.

Section 3. All subleases or assignments or instruments operating as assignments to be presented for the approval of the Secretary of the Interior shall be submitted to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, for transmittal by him with



his recommendation to the Commissioner of Indian Affairs, for the consideration of the Department.

Section 4. All subleases or assignments must be made in triplicate, filed with the Indian Agent, Osage Agency, and, when approved, one copy to be immediately filed in the office of the Commissioner of Indian Affairs, one to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, and one to be delivered to the lessee or assignee.

Section 5. All sublessees or assignees will be required to furnish a bond of not less than \$3,000, and larger amounts where recommended by the Indian Agent, executed by some responsible surety company, guaranteeing the payment of all rents or royalties at the time and in the manner specified in the sublease or assignment, and the performance of all covenants and agreements named in the indenture to be paid and performed by the lessee.

Section 6. In order that the Department may have definite information before it concerning lessees in oil and gas leases covering lands in the Osage Nation, it is required that corporation lessees must furnish a certified copy of their articles of incorporation and affidavits covering the following points, to be submitted to the said U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, with the triplicate copies of subleases or assignments, heretofore referred to in section 4:

(a) A list of officers and directors.

(b) State the number of shares of stock issued, and by whom held, giving post-office addresses of stockholders, and specifically stating the amount of cash paid into the treasury on each share sold; or if paid in property, state kind, quantity, and sum paid per share.

207b (c) Of the stock sold, how much per share remains unpaid and subject to assessment?

(d) How much cash has the company in its treasury and elsewhere? Certificates by officers of the banks should be furnished showing the amount deposited therein to the credit and subject to the check of the company.

(e) What property, exclusive of cash, is owned by the company and its value?

(f) What is the total indebtedness of the company, and specifically the nature of its obligations?

(g) State what experience the officers of the company or others connected with or employed by it have had in the production of petroleum and natural gas, or in any other business.

Affidavits should also be furnished by individual lessees showing their financial responsibility, the amount of cash on hand available for mining operations, and their experience in the oil and gas business or other business. They should also submit affidavits by bank officers showing the amounts deposited to their credit.

All required information relative to subleases or assignments shall be furnished within fifteen days from the date of the letter of the U. S. Indian Agent, Osage Agency, requesting it.

Section 7. There shall accompany each sublease or assignment a

statement under oath by the applicant that such sublease or assignment is not made for speculation, but in good faith and for mining the mineral specified, and such persons or corporations must furnish such other information as may be desired by the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, or other authorized officer of the Interior Department, regarding their prospective operations. Subleases or assignments will not be approved where the parties themselves do not intend to conduct the operations on the land.

Section 8. All subleases or assignments must accurately describe the lands, and specify the mineral to be mined, the rents or royalties, when the same are to be paid, and must contain a provision to the effect that if the lessee shall fail to pay the rents or royalties, or any part thereof when due, or shall fail to faithfully comply with the terms and conditions of the lease, such failure shall constitute a forfeiture of the sublease or assignment and all improvements placed upon the land by the lessee, the Osage Nation shall be entitled to immediate possession of the leased lands and the improvements located thereon, and shall in all respects be subject to the provisions and penalties of the original lease now owned by the Indian Territory

Illuminating Oil Company.

207c Section 9. All lessees must agree to allow the lessor and his agents and any authorized representative of the Interior Department, from time to time, to enter upon and into all parts of the leased premises for the purposes of inspection, and agree to keep a full and correct account of all of their operations, and make report thereof, promptly at the end of each month to the lessor or to such persons as may be designated by the Secretary of the Interior, and their books shall be open at all times to the examination of such officers of the Department as may be instructed in writing by the Secretary of the Interior to make such examination. All subleases or assignments must be executed in the presence of two subscribing witnesses, the post-office address of each party in interest must be shown by the lease which is sought to be approved, and the post-office addresses of the subscribing witnesses must appear upon the papers.

Section 10. All rents, royalties, or payments accruing under any lease, sublease, or assignment, to the Osage tribe of Indians, which have been approved by the Secretary of the Interior, or which require his approval, shall be paid to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, or to such other officer or person as the Secretary of the Interior may designate.

Section 11. With the consent of the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, lessees may make arrangements with the purchasers of oil for the payment of royalty to the U. S. Indian Agent by such purchasers, but such arrangement, if made, shall not operate to relieve the lessee from the responsibility of the payment of the royalty should such purchaser fail, neglect, or refuse to pay same when it becomes due, but in such cases no oil shall be extracted from such lands or removed therefrom until such arrangements have been perfected with the said Indian Agent.

Section 12. No lease, sublease, or interest therein, by working or drilling contract or assignment, or otherwise, or the use thereof, directly or indirectly, shall be valid or recognized, without the consent of the Secretary of the Interior, nor shall any operations thereunder be commenced until after approval by him; and if at any time the Secretary of the Interior is satisfied that the provisions of any lease or that any of the regulations heretofore or that may hereafter be prescribed, have been violated, he shall have authority, after ten days from notice to the parties, to cancel and annul such lease, without resorting to the courts and without any further proceedings, and the lessor shall be entitled to immediate possession of the lands.

Section 13. These regulations shall be applicable to all leases, subleases, or assignments heretofore-made, as well as to those that may hereafter be made.

207d *Rules and Regulations for Operating Properties.*

Section 1. All persons or corporations operating under these regulations, before commencing operations on any lands allotted to Indians and during such operations, shall duly compensate such Indians for damages done to the surface of the land in cultivation, and where such can not be satisfactorily adjusted, the matter shall be investigated by the U. S. Indian Agent, and such payments as he may determine shall be made, subject to appeal from his decision to the Commissioner of Indian Affairs.

Section 2. Lessees shall not be allowed to drill oil or gas wells within 200 feet of the division line between the lands covered by their leases and adjoining lands, whether the latter lands are leased or unleased, allotted or unallotted, nor shall any wells be drilled within 35 feet of any section line on the Osage Reservation.

Section 3. All persons or corporations drilling wells under approved leases, subleases, or assignments upon the Osage Reservation shall keep a true and correct record of each well, including the log of the same, and shall furnish to the United States Indian Agent, Osage Agency, Pawhuska, Oklahoma, a copy of said log not later than fifteen days after the said well has been drilled, duly certified to under oath, by the driller and operator or his representative, and the said operator or his representative shall furnish a further statement under oath as to whether the rig timbers were procured on the Osage Reservation, and if so, state the name of the citizen, or other person, from whom the said rig timbers were purchased, and shall also furnish any other information the said Agent may desire relative to the drilling of said well, or the procurement of timber used in connection with such operation.

Section 4. All lessees or operators for the mining and production of petroleum and natural gas on the Osage Reservation shall, in a practical and workmanlike manner, plug all of their dry and abandoned oil and gas wells at a proper depth with wood or sediment in a manner to exclude all fresh or salt water from the oil or gas bearing rock or sand before the casing is drawn from the said well in a manner satisfactory to the United States Indian Agent for the Osage

Indians, and to this end the following general regulations must be followed, but the lessee will be required to exercise his judgment and put in such other necessary plugs as will effectually protect all strata of oil or gas bearing rock or sand from fresh or salt water, so that the results contemplated will be obtained, and the said lessee or operator shall furnish an affidavit by himself or his representative and one other person, who assisted in the plugging of said well, stating in detail the manner in which the said well was plugged, and shall also furnish a log of the well, certified to under oath, by himself or his representative and the driller, the said log to be attached to the affidavit as to the plugging of the well, and they together shall be filed with the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, not later than fifteen days after the said oil or gas well has been abandoned.

Before the casing shall be drawn from any well for the purpose of abandonment thereof, which has been drilled into any oil or gas bearing rock or sand, it shall be the duty of the lessee or operator having the custody or control of such well at the time of such abandonment, to properly and securely stop or plug the same in the following manner:

Such hole shall first be solidly filled from the bottom thereof to a point at least twenty-five feet above such gas or oil bearing rock or sand with sand, gravel, or pulverized rock; immediately on the top of such filling shall be seated a dry pine plug, not less than two feet in length, having a diameter not less than one-fourth of an inch less than the inside diameter of the casing in such well; above such wooden plug such well shall be solidly filled for at least twenty-five feet with the above-mentioned filling material, immediately above which shall be seated another wood plug of the same kind and size as above provided, and such well shall again be solidly filled for at least twenty-five feet above such plug with the said filling material. After the casing has been drawn from such well there shall be immediately seated at the point where such casing was seated a cast-iron ball or tapered wood plug at least two feet in length, the diameter of which ball or the top of which plug shall be greater than that of the hole below the point where such casing was seated, and above such ball or plug such well shall be solidly filled with the aforesaid filling material for at least a distance of fifty feet.

Section 5. All lessees and operators upon the abandonment or ceasing to use and operate any well which shall have been drilled for oil or gas, he or they shall plug the same so as to completely shut off and prevent the escape of all water therefrom which may be impregnated with salt or other substances which will render such water unfit for use for domestic, steam making, or manufacturing purposes, and in such manner as to prevent water from any such well injuring or polluting any spring, water well, or stream which is or may be used for the purposes aforesaid.

Section 6. All "B-S" or other refuse from tanks and wells shall be drawn off in proper receptacles at a convenient distance from the tanks or wells, to the end that it may be disposed of by being burned, and in no case or circumstance shall it be permitted to flow over the

surface of the land to the injury of any surrounding property or the pollution of any stream.

Section 7. All lessees and operators in possession of any well producing natural gas on the Osage Reservation, in order to prevent the said gas from wasting by escape, shall within ten days after the approval of these regulations, and thereafter within five days after penetrating the gas bearing rock or sand in any well drilled, shut in and confine the gas in said well until such time as the gas therein shall be utilized for light, fuel, or steam power; provided that this regulation shall not apply to any well that is operated for oil when the production of the oil has a greater available market value than the production of gas therefrom, or during the process of drilling, with reasonable diligence, or when oil is found in a lower stratum of sand and the well is operated as an oil well and the gas from the upper stratum of sand is cased off. And said lessees and operators shall pay to the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, the sum of \$10.00 per day for each well during the time such well or wells are allowed to go uncontrolled or uncared for, as directed by this section, unavoidable accidents excepted.

Section 8. All lessees, and those operating under them, on the Osage Reservation, using natural gas for fuel in steam boilers, shall provide the same, within thirty days after the approval of these regulations, with what is known as a "Fulton," "Northrup," or "Gillfillen" boiler regulator, or other regulator equal thereto, so connected to the boiler that the steam pressure will regulate the flow of gas.

Section 9. All lessees, and those operating under them, who are or may hereafter be using natural gas for outside illumination upon their premises, shall not use the said gas for illuminating purposes, other than in what is known as "Storm" burners, or burners which consume no more gas than the said "Storm" burners, and anyone using such gas in the open air or in and around derricks, shall turn off said gas not later than 8 o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of 8 o'clock a. m. and 5 o'clock p. m., and the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, shall be the judge as to the number of lights permitted upon and around any lease, subject to appeal to the Commissioner of Indian Affairs.

Section 10. Any gas well upon the Osage Reservation which has been placed in service commercially, and for which royalty is being paid, will not be considered out of service until due notice has been served on the U. S. Indian Agent, Osage Agency, Pawhuska, Oklahoma, of the same, and that the said well has been disconnected from all service lines. The mere turning of a valve will not be considered sufficient to take a well out of service.

Section 11. The regulations shall be applicable to leases, subleases, and assignments heretofore approved, as well as those that may be hereafter approved, and for any failure on the part of the lessee to comply with any rule or regulation, or any obligation  
207g in his lease, sublease, or assignment, the Secretary of the Interior may revoke his approval of such lease, after due notice to the lessee.

Section 12. Wherever in the drilling of oil or gas wells under approved oil and gas mining leases covering lands within the Osage Reservation both gas and oil are encountered in commercial quantities, and the gas is found in a formation sufficiently above the oil-bearing sand to permit of the same being separated from the oil by casing, such gas shall be so separated from the oil and securely shut in and preserved, and shall not be permitted to flow with the oil through the same string of casing.

Department of the Interior.

Office of Indian Affairs.

April 8, 1907.

The foregoing regulations are respectfully submitted for the approval of the Secretary of the Interior.

C. F. LARRABEE,  
*Acting Commissioner.*

Department of the Interior.

April 17, 1907.

Approved:

JAMES RUDOLPH GARFIELD,  
*Secretary.*

208 That thereafter, and on the 17th day of July, 1911, the following proceedings were had before said Board of Equalization relating to the assessment of the said Company, to-wit:

209 The State Board of Equalization met at ten o'clock a. m., Monday, July 17, 1911, with the following members present:

Governor Lee Cruce, Chairman.

State Auditor Leo Meyer, Secretary.

State Treasurer Robert Dunlop.

Secretary of State Ben F. Harrison.

President Board of Agriculture, G. T. Bryan.

Attorney General Charles West.

State Examiner and Inspector Charles A. Taylor absent from the city under the direction of a physician on account of illness.

\* \* \* \* \*

Mr. Crane (Representing the Indian Territory Illuminating Oil Co.):

I would like to know if the Board at this time is prepared to take any further steps in connection with the assessment of the Indian Territory Illuminating Oil Company, or is there anything we can do to enlighten the Board any further.

Mr. West: I don't remember how that stands.

Mr. Crane: It stands on the hearing had on June 29th, with the manager of the company, counsel of the company and one director present, both subject to examination and presented exhibits and oral testimony, Mr. Brennan and Mr. Leach.



Mr. West: During the examination of the Indian Territory Illuminating Oil Company there were a great many questions asked of Mr. Leach and Mr. Brennan, and I still want an answer to all of those that are not answered. It seems to me there were hardly any of them answered.

Mr. Crane: There were several statements that were to be taken up by letter, and several of them you wanted at that time, and if the Board still wants that information we will be glad to furnish it. We understood nothing further after that; thought it would be accepted. We are entirely open to all inquiry the Board desires to make.

Mr. West: I think the record that was taken at the time will show you better what we desire to know. I forget now about it. Mr. Orr has told me something about it, but my recollection is that this is the company that has that oil business and that gas business in the Osage Nation.

Mr. Crane: Yes, sir.

Mr. West: And there was a great deal I desire to know and asked about at the time which it seems to me was unanswered and as long as the Board is in session I will be in favor of hearing anything else you have to say about those matters.

Mr. Crane: Certain questions about the oil business which were not answered at that time if the Board desires we will be glad to present to you.

Mr. West: Can you do it to-day?

Mr. Crane: It will be impossible to do it to-day.

Mr. West: Can you do it on the second of August?

Mr. West: I move the Board reconsider anything further the Indian Territory Illuminating Oil Company desires to present on the second of August, 1911.

Mr. Dunlop: Second the motion. Motion carried.

\* \* \* \* \*

210 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of The Indian Territory Illuminating Oil Co.

*Reporter's Certificate.*

B. R. Simpson, of lawful age, being first duly sworn, on oath says: That he is one of the official stenographers and reporters of the proceedings of the State Board of Equalization; that in such capacity, he attended the meetings of said Board held on the 29th day of June and the 17th day of July, 1911, and faithfully and correctly reported the proceedings at said meetings in shorthand; and that the foregoing pages, headed and dated as of those days, contain a full, true, correct and accurate transcript of his shorthand notes of the proceedings had on said days relating to the assessment of the Indian Territory Illuminating Oil Company, and a full, true, correct and complete record of all oral and written testimony, and of all



exhibits, statements and pleadings introduced thereat in connection with the assessment of said Company, and of the rulings and orders of said Board in relation thereto.

B. R. SIMPSON,  
*Official Reporter.*

Subscribed and sworn to before me, this 30th day of October, 1911.

[SEAL.]

E. F. KEYS,  
*Notary Public.*

My commission expires January 4, 1915.

211 That thereafter, and on the 2d day of August, 1911, the following proceedings were had before said Board relative to the assessment of said Company:

212 The State Board of Equalization met at two o'clock p. m., August 2nd, 1911, with all members present.

The following proceedings were had:

\* \* \* \* \*

Mr. K. C. Crain representing the Indian Territory Illuminating Oil Company appeared before the Board and made a statement relative to the assessment of that company, and offered the affidavit of Mr. Charles F. Leach, manager of the above named company as an exhibit in these proceedings, which was marked Indian Territory Illuminating Oil Company's Exhibit A-1, and made a part of the record herein and attached hereto. Also offered as an exhibit the exact copy of the original lease of said company above mentioned, which was marked Indian Territory Illuminating Oil Company's Exhibit B-1 attached hereto and made a part of the record in this case.

\* \* \* \* \*

213 (Before the State Board of Equalization of Oklahoma.)

STATE OF OKLAHOMA,

*Washington County, ss:*

Charles F. Leech, of lawful age, being first duly sworn, on oath says: That he is the manager of the Indian Territory Illuminating Oil Company, a corporation organized under the laws of the State of New Jersey, doing business in the State of Oklahoma; that as such manager he has charge of the books and records and business of said company; and that from said books and records he has prepared and presents herewith the following figures and statements, which are hereto attached and made a part hereof, under the exhibit numbers indicated, i. e.:

Exhibit A. Statement of receipts and disbursements from oil and gas prior to Jan. 1, 1907.

Exhibit B. Receipts and disbursements in oil business, Jan. 1, 1907, to May 31, 1911.

Exhibit C. Receipts and disbursements in gas business prior to Jan. 1, 1907.

Exhibit D. Cost of gas wells.

That said exhibits are substantially correct and accurate; that an exactly accurate and absolutely complete statement to cover minor items not included therein, would require months of labor, in an extensive auditing of the said company's books and records, but that said exhibits, figures and statements, with the figures and statements heretofore introduced before said Board, show comprehensively the business of the said company, and that any changes which a more exact and complete statement might make would not affect materially the general showing of the business of the said company; and further affiant saith not.

CHAS. F. LEECH.

Subscribed and sworn to before me this 1st day of August, A. D. 1911.

[SEAL.]

THOS. GORMAN,  
Notary Public.

My commission expires Jan. 25th, 1912.

Ex. A-1.

214 *Statement of Receipts from Oil and Gas.*

Prior to January 1, 1907.

	Receipts.	Disbursements.	
Royalty .....	266,772 70	.....	
Lot 32.....	33,449 46	19,765 09	
" 2.....	979 37	6,627 54	
" 164.....	.....	661 66	
" 293.....	726 89	5,913 76	
	<hr/>		
	301,928 42		32,968 05
Gas .....	50,901 32	57,413 70	
	<hr/>	<hr/>	<hr/>
	50,901 32		57,413 70

*Expenses of Carrying on Business.*

Same Period.

Legal Expense .....	34,134 76	
General Expense .....	45,166 44	
Tax .....	3,685 90	
Horse, Buggy & Harness....	821 78	
New York Office.....	1,417 44	
Bartlesville Office .....	13,585 57	
" " Rent.....	1,691 00	
	<hr/>	
		100,501 29
	<hr/>	<hr/>
	352,829 74	190,883 04

Exhibit A.

215 *Summary of Receipts and Disbursements in the Oil Business  
as Shown by Detailed Statements Attached.*

			Receipts.	Disbursements.	Profits.
For the Year	1907	.....	99,266 17	42,602 97	56,663 20
" " "	1908	.....	135,759 66	66,840 13	68,919 53
" " "	1909	.....	93,157 64	40,634 77	52,522 87
" " "	1910	.....	118,687 49	36,593 19	82,094 30
" " "	1911	.....	.....	.....	.....
Jan. 1 to May 31	.....		82,524 61	27,745 82	54,778 69
Totals.....			529,395 57	214,416 88	314,978 69

Exhibit B.

Lot 32.		Receipts.	Disbursements.
Oil, Lot 32.....		3,433 77	
Lot 32, Expense.....		394 90	3,731 53
" 32, Drilling .....			2,602 40
" 32, Torpedo .....			382 00
" 32, Supply .....		750 93	2,835 45
" 32, Tank .....		325 00	2,238 07
" 32, Bldg. & Rig .....			1,047 55
" 32, Water Plant .....			519 81
		4,904 60	13,357 81
Royalty, Oil.....		93,021 40	6,506 74
			6,506 74
Lot 293.			
Lot 293, Oil .....		1,324 99	
" 293, Expense .....			737 43
" 293, Supply .....			208 91
" 293, Bldg. & Rig.....			15 50
		1,324 99	961 84
General Expense .....			10,912 81
Tax .....			3,810 35
New York Office.....			1,097 91
Furniture & Fixtures .....			306 36
Legal Expense .....		9 90	8,968 22
Bartlesville Office .....		12 88	6,549 86

	Receipts.	Disbursements.
Horse, Buggy & Harness.....	.....	456 85
Bartlesville Office Rent.....	.....	562 50
	<u>22 78</u>	<u>32,664 86</u>
2/3 of this expense chargeable to oil.....	.....	.....
	15 18	21,776 58
Totals for year 1907.....	.....	<u>42,602 97</u>
217. <i>Statement of Receipts and Disbursements in Oil Business for Year 1908.</i>		
	Lot 32.	Disbursements.
Lot 32, Oil .....	Receipts.	
" 32, Expense .....	46,923 56	10,448 45
" 32, Supply .....	429 00	13,924 00
" 32, Bldg. & Rig .....	2,068 86	3,922 68
" 32, Water Plant .....	.....	449 54
" 32, Cleaning Wells .....	100 00	1,075 00
" 32, Torpedo .....	.....	819 00
" 32, Tank .....	.....	1,675 30
" 32, Drilling .....	.....	7,169 60
	<u>49,521 42</u>	<u>39,483 57</u>
Royalty, Oil.....	85,057 45	5,591 90
	<u>85,057 45</u>	<u>5,591 90</u>
Lot 293.		
Lot 293, Oil .....	1,096 71	562 69
" 293, Expense .....	.....	192 50
" 293, Cleaning .....	.....	89 05
" 293, Supply .....	54 08	55 48
" 293, Bldg. & Rig .....	.....	.....
	<u>1,150 79</u>	<u>899 72</u>

Tax .....	45 00	31,297 41	20,864 94
Horse, Bugby & Harness .....		30 00	
Bartlesville Office .....		135,759 66	66,840 13
"    Rent .....			
Attorney's Salary .....			
New York Office .....			
General Rig .....			
2/3 of this expense chargeable to oil .....	45 00		
Totals for year 1908 .....			

218 *Statement of Receipts and Disbursements in Oil Business for Year 1909.*

	Lot 32.	Receipts.	Disbursements.
Lot 32, Oil .....		18,508 00	
"    32, Expense .....		350 00	6,645 80
"    32, Supply .....		778 92	1,773 57
"    32, Bldg. & Rig .....			253 40
"    32, Drilling .....			1,175 30
"    32, Water Plant .....			138 72
"    32, Tank .....			88 84
"    32, Torpedo .....			315 00
Loyalty, Oil .....		19,636 92	10,390 63
		71,953 56	4,699 74

Lot 293.			
Lot 293, Oil .....	1,515 90	1,309 71	
" 293, Supply .....	34 00	864 11	
" 293, Bldg. & Rig. ....	.....	92 38	
" 293, Torpedo .....	.....	423 00	
" 293, Cleaning .....	.....	753 50	
	1,549 90		3,442 70
General Expense .....	.....	13,245 26	
Legal Expense .....	.....	9,113 30	
Tax .....	25 88	3,643 35	
Horse, Buggy & Harness .....	.....	211 00	
New York Office .....	.....	512 75	
Bartlesville Office .....	.....	4,936 48	
" Rent .....	.....	798 05	
General Rig. ....	.....	543 77	
Furniture & Fixtures .....	.....	148 60	
	25 88	33,152 56	
2/3 of this expense chargeable to oil .....	.....	17 26	22,101 70
Totals for year 1909 .....	.....	93,157 64	40,634 77

219 *Statement of Receipts and Disbursements in Oil Business for Year 1910.*

Lot 32.		Receipts.	Disbursements.
Lot 32, Oil .....	.....	21,263 63	
" 32, Expense .....	.....	95 00	7,104 18
" 32, Supply .....	.....	3 50	2,473 62
" 32, Bldg. & Rig. ....	.....	.....	1,436 48



32, Printing .....	1,040 00			
" 32, Tank .....	67 94			
Royalty, Oil .....	21,362 13	12,122 22		
	94,802 22	4,999 74	4,999 74	
Lot 293.				
Lot 293, Oil .....	1,916 34			
" 293, Expense .....		1,009 94		
" 293, Supply .....		105 72		
		1,916 34	1,115 66	
Lot 275.				
Lot 275, Oil .....	595 83			
" 275, Purchase Price .....		3,000 00		
" 275, Expense .....	10 97	519 55		
" 275, Bldg. & Rig. ....		27 50		
" 275, Supply .....		16 78		
		606 80	3,563 83	
General Expense .....		13,642 28		
Legal Expense .....		6,348 67		
Tax .....		8,222 24		
Horse, Buggy & Harness .....		325 75		
Bartlesville Office .....		2,845 54		
" Rent .....		1,139 88		
General Well .....		3,346 47		

	Receipts.	Disbursements.
General Rig.....	.....	489 17
Furniture & Fixtures.....	.....	827 62
		<u>37,187 62</u>
2/3 of this expense chargeable to oil.....		14,791 74
		.....
Totals for year 1910.....		<u>118,687 49</u>
		36,593 19

220 *Statement of Receipts and Disbursements in Oil Business for Year 1911.*

Jan. 1 to May 31.

Lot 32.

	Receipts.	Disbursements.
Lot 32, Oil .....	9,304 35	
" 32, Expense .....	10 00	3,264 76
" 32, Supply .....	.....	3,242 39
" 32, Drilling .....	.....	1,221 25
" 32, Bldg. & Rig.....	.....	289 84
" 32, Cleaning .....	.....	445 60
" 32, Torpedo .....	.....	138 00
" 32, Tank .....	.....	16 32
	<u>9,314 35</u>	8,618 16
Royalty, Oil .....	71,276 23	1,431 91
	<u>71,276 23</u>	1,431 91

Lot 293.	Receipts.	Disbursements.	
Lot 293, Oil .....	1,361 42		
" 293, Expense .....		343 10	
" 293, Supply .....		1,783 26	
" 293, Bldg. & Rig. ....		1,274 35	
" 293, Tank .....		141 75	
" 293, Torpedo .....		195 50	
	1,361 42		3,737 96
Lot 275.			
Lot 275, Oil .....	572 61		
" 275, Supply .....		2 79	2 79
General Expense .....		11,516 39	
Legal Expense .....		4,803 12	
Tax .....		1,209 01	
Office Expense .....		1,663 77	
Office Rent .....		774 92	
Furniture & Fixtures .....		82 85	
Horse, Buggy & Harness .....		35 50	
General Well .....		101 88	
General Rig. ....		805 06	
		20,932 50	
2/3 of this expense chargeable to oil .....		.....	13,955 00
Totals for year 1911 (Jan. 1, to May 31) .....	82,524 61		27,145 82

221

*Gas Statement.*

Receipts and Disbursements in Gas Business for the Years 1904,  
1905, and 1906.

		Receipts.	Disbursements.
Year	1904.....	3,285 57	8,040 93
"	1905.....	18,976 15	27,637 41
"	1906.....	28,639 60	21,735 36

## Expenses of Carrying on Business of Company.

	1904.	1905.	1906.
General Expenses .....	12,331 12	10,165 94	15,403 39
Legal Expenses .....	7,225 09	6,191 66	18,370 09
Tax .....	92 76	84 46	3,337 64
Horse, Buggy & Harness..	322 83	.....	176 50
New York Office.....	.....	.....	957 69
Bartlesville Office Rent...	506 00	465 00	450 00
Furniture & Fixtures,....	193 68	609 45	300 02
	<u>20,671 39</u>	<u>17,516 51</u>	<u>38,995 33</u>

1/3 of which added to the disbursements above will give us statement as follows:

		Loss.
Receipts from sale of Gas, Year 1904....	3,285 57	
Disbursements .....	14,931 39	11,645 82
Receipts from sale of Gas, Year 1905....	18,976 15	
Disbursements .....	33,476 24	14,500 19
Receipts from same of Gas, Year 1906....	28,639 60	
Disbursements .....	34,733 80	6,094 20
		<u>32,240 21</u>

## Exhibit C.

222

*Cost of Gas Wells.*

1905,	No. 10,	Lot 37.....	\$1,493 90	Exhausted.
1905,	" 11,	" 37.....	2,099 09	"
1905,	" 1,	" 59.....	2,459 21	"
1905,	" 12,	" 37.....	1,693 11	"
1905,	" 1,	" 160.....	3,010 36	In service.
1905,	" 1,	" 74.....	3,075 75	" "
1905,	" 2,	" 172.....	3,693 94	Exhausted.
1905,	" 2,	35-26-10.....	3,370 08	Not in Service.
1905,	" 1,	Lot 173.....	3,944 98	Exhausted.
1906,	" 3,	" 72.....	2,275 61	"
1906,	" 1,	2-25- 9.....	4,125 20	Not in Service.
1906,	" 3,	Lot 69.....	2,505 88	In service

906,	"	2,	"	173.....	2,870	51	Exhausted.
907,	"	3,	"	41.....	2,546	90	"
907,	"	3,	"	31.....	2,874	42	"
907,	"	4,	"	31.....	2,960	60	"
907,	"	2,	"	77.....	2,926	01	In Service.
907,	"	7,	"	172.....	1,554	30	Exhausted.
907,	"	5,	"	299.....	3,613	60	In Service.
908,	"	3,	"	77.....	3,470	00	Not in Service.
908,	"	6,	"	299.....	3,529	00	In Service.
908,	"	7,	"	299.....	3,684	89	Not in Service.
908,	"	4,	"	77.....	3,812	08	In Service.
909,	"	5,	"	77.....	3,932	63	" "
909,	NE Cor.	"	"	202.....	1,561	34	" "
909,	"	2,	"	2-26-10.....	3,274	99	Not in service.
909,	"	1,	"	Lot 156.....	3,220	79	" " "
909,	"	1,	"	2-26-10.....	4,070	15	" " "
909,	"	3,	"	2-26-10.....	2,161	00	" " "
911,	"	19,	"	Lot 37.....	1,014	62	Exhausted.
911,	"	3,	"	156.....	3,365	33	Not in service.
911,	"	28,	"	43.....	5,094	73	" " "
					95,285	00	

## Exhibit D.

Well.	Location.	Initial volume.	Volume Jan. 1, 1911.	Original cost.
6	Lot 299.....	14,000,000	6,648,216	\$3,529 00
1	" 160.....	6,000,000	3,024,000	3,010 36
1	" 74.....	8,000,000	2,160,000	3,075 75
4	" 77.....	10,000,000	5,495,524	3,812 08
5	" 77.....	17,000,000	5,305,920	3,932 63
2	" 77.....	15,000,000	5,495,524	2,926 01
3	" 69.....	4,800,000	2,339,280	2,505 88
5	" 299.....	15,500,000	6,648,216	3,613 60
			Almost	
NE Cor.	" 202.....	No Gauge;	Exhausted	1,561 34
		90,300,000	37,116,680	\$27,966 65

3 1/2	Total Cost of Wells Purchased, as shown by attached list.....	95,285 00
	Maintenance to date.....	13,967 87
	Billing for Gas by Company, all of which were failures, and represent a total loss, salvage deducted at original cost.....	15,175 83

Total invested in Gas wells, since January 1, 1905.....	\$124,428 70
Cost of above wells which are exhausted.....	\$31,481 19

Of the ten wells in service showing an initial volume of 90,300,000 cu. ft., on January 1, 1911, show only a volume of 37,116,680 cu. ft., showing a loss from service of, in round numbers, 53,000,000 cu. ft., or more than half, and inasmuch as the static pressure has correspondingly fallen off, I would consider them exhausted to the extent of at least  $\frac{2}{3}$ ; the original cost of these wells was \$27,963.55,  $\frac{2}{3}$  of which is. . \$18,644.37

In addition to the loss of volume in these wells mentioned, all of the wells in the immediate vicinity show a heavy loss in volume, as well as static pressure. There are also 10 wells shown on attached schedule costing \$35,837.16 from which we are receiving no revenue on account of being unavailable for a market we have established and are slowly, of natural consequence, depreciating in volume. It will then be noted that, with the amount of \$124,428.70 invested in wells, \$15,175.83 a loss in the first instance, \$31,481.19 for wells exhausted, and \$18,644.37 for loss of wells in service, we have a total loss of \$65,301.39, which leaves only a net of our original purchase \$65,301.39, \$35,837.16 of which we are unable to realize on at this time.

(Here follows copy of original lease marked pages 224 and 225.)

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# Exact Copy of Original Lease.

WHEREAS, It is known that other Indian Nations have for many years and do now receive a very considerable revenue from the development of substances of commercial value found on their reservations, and

WHEREAS, It is believed by the Osage people that the reservation held by them in common is rich in similar commodities, which it is their desire to develop, and

WHEREAS, One Edwin B. Foster, of New York City, N. Y., has made application to the Osage National Council for the privilege of prospecting and boring for Petroleum and Natural Gas upon the Osage reservation, and proposes to enter into a contract for that purpose upon terms that will not be detrimental to the agricultural interests of the country and which would increase the revenue and enhance the value of our common property should such prospecting result in the discovery of the said Petroleum or Natural Gas, now, therefore,

Be it enacted by the Osage National Council assembled at their Council House at Pawhuska, Oklahoma, this 14th day of March, 1896, that James Bigheart, principal Chief of the Osage Nation, be and he is hereby authorized to enter into a contract with the said Edwin B. Foster for the development of Petroleum and Natural Gas, only, upon the Osage reservation, and he is hereby instructed to make the said contract on the form prescribed by the Interior Department to meet the requirements of law governing such leases, for a term of ten years, with the privilege of renewal for a term of ten years more at the expiration thereof, if the results of said lease prove satisfactory and upon the approval of the Agent in charge, subject to the approval of the Commissioner of Indian Affairs and the Secretary of the Interior.

THOMAS MOZIER,  
Nat. Secretary.

his  
SAUCY CHIEF, x mark  
Pres. Council.

JOHN MOZIER,  
Nat. Int.

JAMES BIGHEART,  
Prin. Chief.



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226 In the Supreme Court of the State of Oklahoma.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY ILLUMINATING OIL COMPANY by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

*Entry of Appearance.*

Now comes the State Board of Equalization of the State of Oklahoma, and the various officers comprising said Board, to-wit, Governor Lee Cruce, State Auditor Leo Meyer, Secretary of State Benjamin F. Harrison, State Treasurer Robert Dunlop, President Board of Agriculture, G. T. Bryan, Attorney General Charles West, and State Examiner and Inspector Charles A. Taylor, in response to the notice of appeal served on the Secretary of State and on the State Auditor, Ex Officio Secretary of said Board, by the Indian Territory Illuminating Oil Company, appellant and petitioner herein, as per copy thereof and acknowledgments of service attached to the record herein, and hereby waive issuance and service of summons in error.

Oct. 31st, 1911.

CHARLES WEST,

*Attorney General,*

By W. C. REEVES,

*Asst Att'y Gen*

Filed Oct. 31, 1911, W. H. L. Campbell, Clerk.

227 OKLAHOMA CITY, OKLA., Aug. 2, 1911.

The State Board of Equalization met at 2 o'clock P. M., August 2, 1911, pursuant to recess, with all members present.

Mr. Meyer: I move that all public service corporations assessed by this Board shall be finally considered to have been assessed as of this date, August 2nd, 1911.

Mr. Cruce: Second the motion.

On roll call the vote was as follows:

Voting aye: Bryan, Cruce, Harrison, Meyer and Taylor.

Voting no: Dunlop. Absent and not voting, West.

228 That thereafter, and on the 30th day of August, 1911, the following proceedings were had by and before the State Board of Equalization, to-wit:

229 OKLAHOMA CITY, OKLA., Aug. 30, 1911.

The State Board of Equalization met pursuant to recess at ten o'clock A. M. August 30th, 1911, with the following members present:

Governor Lee Cruce, Chairman,

Secretary of State Ben F. Harrison, Secy. Pro Tem.,

State Treasurer Robert Dunlop,

President Board of Agriculture, G. T. Bryan,  
 State Examiner and Inspector Charles A. Taylor,  
 Attorney General Charles West.  
 Absent: Auditor Leo Meyer.

Mr. K. C. Crane appeared before the Board representing the Indian Territory Illuminating Oil Company and made a statement relative to the assessment of said company.

Mr. West: I move we reconsider the assessment of the Indian Territory Illuminating Oil Company.

Mr. Taylor: Second motion.

Motion carried, all members present voting aye.

Mr. West: I move we assess the property of the Indian Territory Illuminating Oil Company for the purpose of taxation the sum of \$538,350.

Mr. Taylor: Second the motion.

Motion carried, all members present voting aye.

230 That thereafter, and on the 2d day of October, 1911, the following proceedings were had before said Board relating to the assessment of said Company:

231 OKLAHOMA CITY, OKLA., Oct. 2, 1911.

The State Board of Equalization met pursuant to recess taken at 2:00 o'clock p. m., all members present with exception of State Examiner and Inspector Chas. A. Taylor, absent, on account of illness.

### Indian Territory Illuminating Oil Company.

Mr. K. C. Crane representing the Indian Territory Illuminating Oil Company appeared before the Board and made a statement relative to the valuation for taxation purposes of the property of said company.

232 In the Supreme Court of the State of Oklahoma.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY ILLUMINATING OIL Co.

I, Leo Meyer, Auditor of the State of Oklahoma, and Ex Officio Secretary of the State Board of Equalization of said State, do hereby certify that the within and foregoing sheets contain a full, true and correct transcript and copy of all reports and returns filed in my office, and all oral and written testimony, exhibits (except Exhibit A at the hearing of June 29, 1911, the same being a part of the record in Case No. 2845 in the Supreme Court of Oklahoma, as herein noted), pleadings and statements filed, heard, introduced or considered before the said Board of Equalization relating to the assessment by said Board of the property of the Indian Territory Illuminating Oil Company for the purpose of taxation in the State

of Oklahoma for the fiscal year ending June 30, 1912, and all orders, motions and rulings by said Board thereon.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of my office, this 30th day of October, 1911.

[SEAL.]

LEO MEYER,

*State Auditor and ex Officio Secretary  
of the State Board of Equalization.*

233 In the Supreme Court of the State of Oklahoma.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY ILLUMINATING OIL COMPANY by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

*Notice of Appeal.*

To Benjamin F. Harrison, Secretary of State of the State of Oklahoma, and Lee Cruce, Governor; Leo Meyer, Auditor and ex Officio Secretary of said Board; Robert Dunlop, State Treasurer; G. T. Bryan, President Board of Agriculture; Charles A. Taylor, State Examiner and Inspector; Charles West, Attorney General, Comprising the State Board of Equalization of the State of Oklahoma:

You are hereby notified that the Indian Territory Illuminating Oil Company appeals from the assessment and valuation of its property for the purpose of taxation in the State of Oklahoma for the fiscal year ending June 30, 1912, as made and fixed by the State Board of Equalization on the 16th day of May, 1911, and modified on the 30th day of August, 1911, and from the action of said Board in failing, neglecting and refusing to correct, modify or reduce said assessment as made on said 30th day of August, 1911; said Board of Equalization being still in session.

You are further notified that as grounds of its appeal from said assessment and valuation, and from the action of said Board of Equalization in failing, neglecting and refusing to correct said assessment, the Indian Territory Illuminating Oil Company alleges and states as follows, to-wit:

234 First, That said company had before the making of said assessment and valuation, and as required by law, filed in the office of the Auditor of the State of Oklahoma its duly verified return of its taxable property, showing the actual fair and true cash value thereof as \$53,835.10; that said sum represents and did represent the actual fair cash value of the taxable property of said company as of the first day of February, 1911; and that the value of said taxable property has not increased since said date, but has rather decreased. And, further, that on the 18th day of April, 1911, said company, by its manager, appeared before said Board of Equalization and introduced evidence in support of the statements made in said return.

Second. That on the sixteenth day of May, 1911, the said Board did arbitrarily and unjustly, and contrary to the evidence before it and to said verified return, and without any information or evidence justifying such action, assess and fix the valuation of the taxable property of said company at \$1,130,535; that thereafter, and on various occasions, the said company, by its attorneys, appeared before said Board and protested against and complained of said assessment as being excessive and unreasonable, and introduced evidence in support of said complaints and protests; said appearances being on, to-wit, the 29th day of June, the 10th day of July, the 17th day of July, the 2d day of August, and the 30th day of August, 1911; that on said 30th day of August, 1911, said Board reconsidered said assessment of May 16, 1911, and assessed the property of said company for the purpose of taxation at \$538,350.00; said assessment being contrary to the return made by said company and to 235 \* the evidence before said Board, and being \$484,514.90, or nine hundred per cent, in excess of the fair cash value of said property, as set forth in the verified return thereof filed in the office of the Auditor of the State of Oklahoma, and placed by him before said Board; that on the 2d day of October, 1911, said company appeared before said Board, by its attorneys, to protest against and complain of said excessive, unreasonable, arbitrary and erroneous assessment and valuation of its property, but that said Board failed, neglected and refused, and still fails, neglects and refuses, to change, correct or modify said assessment and valuation, and ignored and disregarded, and continues to ignore and disregard, said return and all of said evidence introduced before it supplementary to and confirmatory of said return.

Third. That said arbitrary, unjust and erroneous action of said Board, in so assessing the valuation of said Company's property for the purpose of taxation in the State of Oklahoma, will, if allowed to stand, greatly and unfairly increase the burden of taxation resting upon said company, and will deprive it of its property without due process of law, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States, and Section 7 of Article II of the Constitution of the State of Oklahoma, and will deprive it of the equal protection of the laws, contrary to the provisions of Section 1 of Article XIV of the Constitution of the United States.

Fourth. The said Indian Territory Illuminating Oil Company further alleges and states that in fixing the assessed valuation of the taxable property of said company the said Board, as it is informed and believes, attempted to place a value upon and to tax the franchise, occupation, license, or right of said company to do business; which franchise, license and right the said company 236 possesses and is exercising in the reservation of the Osage Tribe of Indians, the same being Osage County, Oklahoma, under and by virtue of a lease specifically approved by the United States Government, through its Interior Department, as guardian of said Tribe; that said lease with said Tribe was specifically renewed by the United States Government by the Act of March 3, 1905, and was further by said Government recognized in the Osage Allotment Act,

being the Act of June 28, 1906; that the territory comprising said Osage Reservation is under the exclusive jurisdiction of the United States in so far as the rights of said Osage Tribe are concerned; that the operations of said company in said territory, under said lease contract so made, approved and recognized, are governed and carried on under rules and regulations promulgated by the Honorable the Secretary of the Interior, as provided in said lease, and that this company is under the direct control of the Government of the United States, exercised by the officers of the said Department; and that any attempt to tax this company's franchise or right to do business and operate under said lease is an attempt to tax a right and franchise granted by the Federal Government, and is illegal and void; and, further, that any attempt to tax this company's operations and right to do business with said Osage Tribe of Indians under said lease is an attempt to impose, and will result in imposing, an illegal burden by the State of Oklahoma upon commerce with an Indian Tribe, contrary to the provisions of Section 8 of Article I of the Constitution of the United States.

237 Fifth. That said company is not engaged in a public service of any kind, and that said company is not in any sense a public service corporation, as shown by the evidence presented to said Board; and that said Company is not taxable on the assessment of said Board, and has no property which is subject to assessment and valuation for taxation by said Board, under the laws of the State of Oklahoma.

Sixth. That the small surface gas lines belonging to this company are but a very small part of the business of the company, its business being almost wholly and primarily the production of petroleum or oil; that said lines were built and extended from time to time on the surface of the ground for the sole purpose of conveying gas to producers of oil, in order to develop the said leased territory for oil, and increase the company's profits from its oil interests; that said surface lines were extended to the towns of Avant and Bigheart incidentally, and at the earnest request of the inhabitants of said towns, who were and are principally people working in the oil fields surrounding said towns; and that this company has no franchise rights whatever as a public service corporation in said towns, or either of them, for any purpose; and said company insists that if its service to the people of said towns be adjudged a public service, and this company a public service corporation as to said towns, that still, in no event should any of this company's property be assessed and taxed as employed in a public service, as to said towns, other than the property actually used in serving the consumers in said towns, as shown in the evidence before said Board.

238 Seventh. That the furnishing of gas by this company to the Ochelata Gas & Water Company and the Bartlesville Gas & Oil Company, as set forth in the evidence before said Board, is not a public service; that the said companies so furnished with gas by this company are themselves public service corporations in the towns of Ochelata and Bartlesville, respectively, by reason of certain franchise rights therein, under which they furnish gas to

the domestic consumers in said towns, and are so assessed and taxed; and that it is unfair, unjust and illegal to attempt to assess and tax this company as a public service corporation upon the same business.

Eighth. That the said Board had no right or authority to increase the valuation of the taxable property of the said company for the purpose of taxation, above the valuation thereof as set forth in the verified return thereof duly filed in the office of the State Auditor, without evidence justifying such increase; and that its action in so increasing such valuation, and in failing, neglecting and refusing to modify, reduce and correct such erroneous valuation, ignoring and disregarding the information and evidence before it was arbitrary, unjust, unreasonable and illegal, and will, if allowed to stand, result in depriving this company of its property without due process of law, and in depriving it of the equal protection of the laws, and will render this company unable to carry out the provisions of, and to carry on and perform the duties imposed upon it by, its said lease and contract with the Osage Tribe of Indians and the United States Government; thereby hindering and obstructing the performance of a contract with the Federal Government, and interfering unduly and illegally with commerce with an Indian Tribe: all contrary to the specific constitutional provisions hereinbefore referred to.

Ninth. That this company is now paying and has heretofore paid all legal taxes upon its business and property in this State, 238½ including gross revenue, gross production and ad valorem taxes, and that it has not at any time attempted to avoid the payment of any just or legal tax.

Tenth. That this appeal is taken and this notice is given prior to the final adjournment of the said State Board of Equalization, and within sixty days after the making of said assessment.

And that, for the reasons hereinbefore set forth, the Indian Territory Illuminating Oil Company appeals to the Supreme Court of Oklahoma from the action of the State Board of Equalization in fixing and assessing the valuation of the taxable property of the said company on the 30th day of August, 1911, as hereinbefore set forth, and from the action of said Board in failing, neglecting and refusing to modify, correct or rescind such erroneous assessment; in pursuance and under the authority of an Act of the Legislature of Oklahoma entitled "An act Providing for Appeals from the actions of Board of Equalization," approved March 24, 1910, and Section 15 of an Act of the said Legislature entitled "An Act creating the office of county assessor," etc., approved March 25, 1911; and the said company hereby serves this, its notice of appeal, upon the Secretary of State, as provided in said Statute of 1910, and upon the said Board of Equalization.

THE INDIAN TERRITORY ILLUMINATING  
OIL CO.,

By JOHN H. BRENNAN,  
HARRIS & NOWLIN,  
KENNETH C. CRAIN, *Attorneys.*



239 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

THE STATE OF OKLAHOMA, ss:

I, Benjamin F. Harrison, Secretary of State of the State of Oklahoma, do hereby acknowledge and accept service of notice of appeal of the Indian Territory Illuminating Oil Company from the assessment and valuation of its property by the State Board of Equalization of Oklahoma for the purpose of taxation for the fiscal year ending June 30, 1912, and from the action of said Board in failing to modify, correct or reduce such assessment; of which notice the foregoing is a true copy.

Witness my hand, and the seal of my office, this 26th day of October, 1911.

[SEAL.]  
[SEAL.]

BENJAMIN F. HARRISON,  
*Secretary of State.*

240 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

THE STATE OF OKLAHOMA, ss:

I, Leo Meyer, Auditor of the State of Oklahoma, and Ex Officio Secretary of the State Board of Equalization, do hereby acknowledge and accept service of notice of the appeal of the Indian Territory Illuminating Oil Company from the assessment and valuation of its property by the State Board of Equalization of Oklahoma for the purpose of taxation for the fiscal year ending June 30, 1912, and from the action of said Board in failing to modify, correct or reduce such assessment; of which notice the foregoing is a true copy.

Witness my hand, and the seal of my office, this 26th day of October, 1911.

[SEAL.]

LEO MEYER,  
*State Auditor and ex Officio Secretary of  
the State Board of Equalization.*

241 In the Supreme Court of the State of Oklahoma.

To Hon. Leo Meyer, State Auditor, Oklahoma City, Oklahoma:

For the purpose of use in its appeal from the assessment and valuation of its taxable property for the purposes of taxation for the fiscal year ending June 30, 1912, by the State Board of Equaliza-

tion, the Indian Territory Illuminating Oil Company respectfully requests that you, as Secretary of said Board, and custodian of its minutes and records, furnish to the said Company a complete record of the returns, evidence, pleadings, exhibits and statements filed, heard, introduced or considered before the said Board or in your office relating to the assessment of the said Indian Territory Illuminating Oil Company, and all orders, motions, rulings and proceedings of the said Board in connection therewith.

INDIAN TERRITORY ILLUMINATING  
OIL CO.,

By JOHN H. BRENNAN,  
HARRIS & NOWLIN,  
KENNETH C. CRAIN,  
*Attorneys.*

I hereby acknowledge receipt of a copy of the above request and notice, this 26th day of October, 1911.

LEO MEYER,  
F.,  
*State Auditor, ex Officio Secretary State  
Board of Equalization.*

242 In the Supreme Court of the State of Oklahoma.

In the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization for the Fiscal Year Ending June 30, 1912.

*Entry of Appearance.*

Now comes the State Board of Equalization of the State of Oklahoma, and the various officers comprising said Board, to-wit, Governor Lee Cruce, State Auditor Leo Meyer, Secretary of State Benjamin F. Harrison, State Treasurer Robert Dunlop, President Board of Agriculture G. T. Bryan, Attorney General Charles West, and State Examiner and Inspector Charles A. Taylor, in response to the notice of appeal served on the Secretary of State and on the State Auditor, Ex Officio Secretary of said Board, by the Indian Territory Illuminating Oil Company, appellant and petitioner herein, as per copy thereof and acknowledgments of service attached to the record herein, and hereby waive issuance and service of summons in error.

CHARLES WEST,  
*Attorney General,*  
By W. C. RIVES,  
*Ass't Atty Gen.*

Oct. 31st, 1911.

(Filed Oct. 31, 1911, W. H. L. Campbell, Clerk.)

Endorsed: # 3240. In the Supreme Court of the State of Oklahoma. In the Matter of the Assessment of the Indian Territory Illuminating Oil Company. Petition and Record of the Indian Territory Illuminating Oil Co. on Appeal. John H. Brennan, Bartlesville, Okla., Harris & Nowlin, Kenneth C. Crain, Oklahoma City, Okla., Attorneys for Petitioner.

243 The following is a full, true and correct copy of the testimony and exceptions and proceedings introduced and had before the Referee in the hearing and trial of this cause, as follows, to-wit:

244 In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY  
ILLUMINATING OIL COMPANY.

*Oath of Referee.*

I, R. M. Campbell, of lawful age, being first duly sworn, on oath say: That I will support and defend the constitution of the United States and of the State of Oklahoma, and that I will faithfully and impartially perform the duties of referee in the above entitled cause, according to law, to the best of my ability, so help me God.

R. M. CAMPBELL.

Subscribed and sworn to before me this 23d day of March, 1912.

[SEAL.]

E. E. GIBBENS,

*Notary Public.*

My commission expires July 24, 1915.

245 In the Supreme Court of the State of Oklahoma.

No. —.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY  
ILLUMINATING OIL COMPANY.

The appellant appeared by John H. Brennan, its attorney, and the State of Oklahoma, appeared by W. C. Reeves, Assistant Attorney General.

And thereupon, the following proceedings were had in office of R. M. Campbell, referee, in Oklahoma City, Oklahoma, on the 23d day of March, 1912.

C. F. LEACH, of lawful age, being duly sworn as a witness on behalf of the appellant, testified as follows:

Direct examination.

By Mr. Brennan:

Q. Mr. Leach, you are a resident of Bartlesville, Oklahoma?

A. I am.

Q. You are general manager of the Indian Territory Illuminating Oil Company?

A. I am.

Q. Was your attention called to a demand or request made by the office of the attorney general for further information?

A. I was.

Q. State, whether this paper I show you, and which we will call "Exhibit Number 1" for identification only, whether that is a summary or memorandum of your property that is assessed, and of taxes paid ad valorem?

246 A. That—this memorandum shows the value of property as returned to the State, or to the County Assessors, in Washington and Osage Counties for the year of 1911, and also the value of property returned to the State Auditor for Osage and Washington County, and also the gross production tax paid, and the yearly gross revenue tax, or matters only assessable against Pipe line companies.

Q. Which you paid, these taxes for 1911, on that amount?

A. The taxes have not been paid, except in Washington County, in Bartlesville of Washington County.

Q. Can you state what the amount of the tax is in Osage County?

A. I cannot.

Q. Can you state whether that tax or assessment, as it appears on the rolls in Osage County, is in any way connected from the books of Osage County?

Mr. Brennan. I show you "Exhibit Number 2."

A. That is a statement, as furnished to me, by the assessor, by the treasurer, County treasurer, of the amount as extended on his rolls, and as returned to him from the Board of Equalization, but does not include the amount as was returned by the Company to the County assessor.

Mr. Brennan: I show you "Exhibit Number 3."

Q. And, state whether that is a statement of the entry made on the rolls in Washington County?

A. It is.

Q. Of the return, on the instructions from the State Board?

A. Yes, that is the property returned in Bartlesville City.

Q. What is "Exhibit Number 4?"

247 Q. State whether that is a general levy and description of the property returned, and exact description of the personal property of the company?

A. It is. Of that as returned in Osage County.

Q. I refer you to "Exhibit Number 5," do you know what that is?

A. That is as returned in Bartlesville City.

Q. Now, tersely describe "Exhibit- 7 to 17" inclusive?

A. They are the returns or copies of the returns, as was returned to the County of Osage and Washington County.

Q. Will you state generally, now, whether "Exhibits 4 and 5" is a resume of the others?

A. It is. Number 4 is a resume of 7 to 17 inclusive, number 5 is independent.

Q. Now, just tersely, what is the total value of all the property as returned?

A. One Hundred Six Thousand Six Hundred Sixty-five Dollars and twelve cents.

Q. That doesn't cover the property on which the gross income tax is paid?

A. No. That doesn't include the property upon which gross revenue was paid.

Q. Now, it does not include either a description of the property returned to the State Board, in your return to the State Board? That doesn't include the property you return to the State Board?

A. Yes.

Q. Same property?

A. Yes, sir, same property.

248 Q. Did you return it to the County too?

A. No, the property, as returned to the State Board amounted to \$53,835.10. The property returned to the County Assessors amounted to \$52,830.02.

Q. It is all different property?

A. Different properties.

Q. This \$106,000, item then, covers the gross value of both properties that were returned to Osage County and Washington County?

A. Yes sir.

Q. Now, the greater part of the property of the Indian Territory Illuminating Oil Company, is your royalty property, isn't it?

A. Yes sir.

Q. What part of your acreage does the company own itself, and operate, outside of the property that is subleased to some other person, and from which you get royalties?

A. We are producing oil from four different properties.

Q. Well, about how much acreage is there in the four different properties?

A. Three to four thousand acres. However, that would include probably seventy-five per cent that we don't know whether it would produce oil or not, seventy-five per cent of that amount would be—

Q. You mean seventy-five per cent of the three or four thousand acres?

A. Yes.

Q. And when you say three or four thousand acres, you refer to the total acreage in the particular leases that you own?

A. The particular lot or block number.

Q. Now, these lots, you refer to the particular lot or block, or lease, that you own?

249 A. Yes sir, and operate.

Q. Now, some of those lots contain twelve hundred acres, do they not?

A. Not that we are operating, the largest is about eleven hundred acres.

Q. They are about three miles long, and a half mile wide?

A. Yes sir, one of them is nearly three and one-half miles long.

Q. Now, this three or four thousand acres then, seventy-five per cent of which is not drilled, is the total operated by the company, that is, outside of the acreage from which production is obtained?

A. Yes, sir, for oil. (Question for the books.)

Q. The receipts of the company, as far as oil is concerned, outside of that three or four thousand acres, is from the royalty of  $1/24$  reserved to the company from about one hundred and twelve sublessees?

A. It is.

Q. And then, besides that, you have the receipts from this gas business?

A. Yes sir.

Q. Now, do you have any method of entering the values of properties on your books, so as to make trial balances in the usual acceptance of that phrase among bookkeepers?

A. No sir.

Q. Do you enter the values of properties at all, upon your books?

A. We do not.

Q. You have a one-sixth royalty, as a general thing, from all the sublessees?

A. Yes, sir.

— One-eighth is paid to the Osage tribe of Indians, is it not?

250 A. That is correct.

Q. Now, is it not a fact, that you never get the one-sixth but that a division of it is entered into with the pipe line company, so that the pipe line company does pay the Indian one-eighth.

—  
Q. So that with reference to all your property so subleased, you have no control, of the books, and nothing to do with the collection of the royalty which you are paid one-twenty-fourth ( $1/24$ ) by the pipe line company, direct over to you?

A. That is correct.

Q. And, as far as that part of the business is concerned, it is merely the receipt of the one-twenty-fourth?

A. Yes, sir.

Q. Now, Mr. Leach, do you make statements every year to the stockholders?

A. Yes, sir.

Q. What do you call that?

A. Well, that is a trial balance, but it only refers to, and contains statements of receipts and expenditures, liabilities and bills receiv-

able and bills payable; no values of property is taken into account, only accounts and cash disbursements.

Q. How long is your lease to run yet?

A. Four years from the 16th day of March this year; expires March 16, 1916.

Mr. Brennan: Now, I offer these different exhibits in evidence, formally, for the purpose of giving Mr. Reeves a chance to examine;—that I have covered the ground.

Mr. Campbell: Exhibits 1 to 17" inclusive, as referred to are admitted as a part of the record.

### Cross-examination.

251 By Mr. Reeves:

Q. What is the Indian Territory Illuminating Oil Company, a corporation?

A. A corporation.

Q. Under what law is it organized?

A. New Jersey.

Q. What is the capitalization of that corporation?

A. Three Million Five Hundred Thousand Dollars.

Q. Has all the stock been issued?

A. I couldn't say, but my impression, yes sir, that is my understanding.

Q. Does the company own, what is called a blanket lease, upon the entire Osage nation?

A. No sir.

Q. What proportion of the Osage nation?

A. Six Hundred Thirty Thousand acres.

Q. And part of that is subleased to one hundred and twelve sublessees?

A. Well I couldn't say positively, but in the neighborhood.

Q. And the balance of the acreage, you operate yourself?

A. Yes sir.

Q. Does the company own any property other than this lease in the Osage Nation, and the oil properties thereon, anywhere else?

A. Not that I know of, no sir.

Q. What is the property it owns in Washington County?

A. Something like six miles of these pipe lines, I don't remember what it is, whatever the returns show in Washington County.

Q. Part of your business is selling gas to consumers, and the other branch of your business is producing oil, is it not?

A. Well, you might so interpret it.

252 Q. And you produce oil directly, and also through your sublessees, do you not?

A. Yes sir.

Q. Now, in your statements to your stockholders, or upon the books of your company, what valuation do you place upon this whole property?

A. None.

Q. Has it never been appraised, or assessed?



A. Not to my knowledge. There may have been estimates made by various members of the company, but there is no record, for the reason that you don't know what the value is, there is no value; because if it did not produce oil, it is not worth anything, and you don't know whether it will produce oil. There is only a very limited amount of it that is tested, and you couldn't place a value upon it, for the simple reason; for the reason, if there was a value on the right to produce, you couldn't tell what that right would be a month from now.

Mr. Campbell: As I understand Mr. Leach, you don't carry in your books, any values of these several properties, as an asset or liability?

A. No sir.

Q. And you never pretend to carry on your books, any statement of valuation on this property?

A. No except one lease only. It was a lease that we purchased and gave Three Thousand Dollars for, and that was carried with Three Thousand Dollars for the lease, and the reason of that was, because it was a purchase outright in about 1910.

Q. That was not a part of this blanket Osage Lease you speak of?

A. It was at one time, but had been bought back. I will state that the price placed upon it, was more upon the value of  
 253 the property, the tangible property, there had been three or four wells drilled on it.

#### Examination by Mr. Reeves:

Q. Now, this revenue from your sublessees, which is represented by one-twelfth interest, that is what you might term net profit, is it not?

A. No, sir, not net profit.

Q. What is there, in the way of charges incident to that properties?

A. Well, I keep, we keep one clerk almost exclusively, whose duty it is to check that up in the office, there is a certain amount of supervision. If we had no properties, we would have to maintain an office force almost as large as we have. We would have to maintain the office of the company, and almost all of the expense we now incur. For a number of years, the company only had a very limited amount of properties—their expenses were almost as much as they are now, and I would like to correct this in the statement of the one-twenty-fourth, I would like to state that about one hundred and fifty-five thousand acres of this six hundred and eighty thousand acres we have only the one-fortieth.

Q. Now, what are these subleases producing in the way of royalty, in dollars and cents.

A. Well—you have it there in that statement.

Q. Does this statement also contain the amount of production of the company per year?

A. Yes sir, yes sir, as near as practical or necessary, to arrive at approximately the expenditures and receipts.

Q. How long have you been in the oil business, Mr. Leach?

A. I think it was in 1905, that I went to work for the government, in charge of oil and gas operations on the Osage reservation, and resigned that work in 1909, and took a position with this company.

Q. Are you familiar with the value of oil properties in Osage and Washington counties, in this State?

A. Well, I don't know hardly how to answer that. I believe I would know well enough what I would want to give for a property, but I don't know as I would want to place myself up as an expert on valuation, for the reason that I have had nothing to do with buying and selling.

Q. When did the company acquire this property?

A. March 16, 1896.

Q. When was the Indian Territory Illuminating Oil Company organized?

A. In 1902.

Q. When did it take over the property which is involved in this litigation?

A. Well, I couldn't answer that positively, for the simple reason that I was not connected with the company, but it was organized for the purpose of taking it over, and took it over as soon as it was consistent with such matters.

Q. Did it purchase it or acquire it in some other way?

A. I have no knowledge on that.

Q. I am not positive yet, Mr. Leach, that I understand just what property has been actually assessed for taxation, belonging to your company, in Washington and Osage Counties?

A. Well, I think I can make that clear to you. We returned to the board of equalization, all of our pipe lines and fittings connected with the operation of same. We returned to the County assessors,—County authorities, all other properties. I will also say, that in Washington County, we had properties, except such as was returned to the board of equalization, except in the city of Bartlesville, where we returned our gas and office fixtures, and such things.

Q. That aggregated the amount set forth in your "Exhibit 1" did it not, which shows Fifty-two Thousand Eight Hundred Thirty Dollars and two cents (\$52,830.02)?

A. Yes sir.

Q. And the balance of your property, you undertook to return to the State Board of Equalization?

A. Yes sir.

Q. Which amounted to Fifty-three Thousand Eight Hundred Thirty-four and 10/100 Dollars?

A. Yes sir.

Q. Then, according to your contention, the property of the company, including its leasehold interest, should only be placed, for taxation, at One Hundred Six Thousand Six Hundred Sixty-five and 12/100 Dollars?

A. Yes, sir.

(Statement by Mr. Brennan:) The witness is a layman. The

property of the I. T. I. O. Company, and all of it, that you are seeming to tax in this proceeding, like any other oil company is paying its just proportion of taxes, in addition to this One Hundred Six Thousand Dollars?

Q. Do you refer to this gross revenue tax?

A. Yes sir.

JOHN H. BRENNAN, of lawful age, being duly sworn as a witness on behalf of the appellant testified, as follows:

Mr. Brennan:

Q. What is your name?

A. John H. Brennan.

Q. When did you first become connected with the business of the Indian Territory Illuminating Oil Company?

256 A. In 1902. I was retained to liquidate the stock or property of the company of the old stockholders and old owners, from certain people in New York, known as the promoters, by action commenced in New Jersey, Oklahoma and Indian Territory. I was then residing in Wisconsin. All stock, except about one hundred thousand shares, was in the hands of the Corporation Trust Company, of New York, as trustee under a promoters' agreement, and the promoters were in possession of the estate, and taking its revenues. The legal proceedings resulted in our settling with the promoters, and personally, I decided to distribute the stock among the old stockholders, and keep the new corporation, namely, the Indian Territory Illuminating Oil Company, intact, because some of its stock had been sold to bona fide purchasers for value, and should be respected—I think about seventy-five thousand shares. I commenced in April, 1903, to distribute the stock, and ascertain the old stockholders from time to time, and I think it was concluded sometime in 1904. There was some cross litigation with reference to the title and ownership, and interest of old stockholders, with which I was personally unacquainted. The title to the lease had been transferred to the new company, organized by the promoters, namely, the Indian Territory Illuminating Oil Company, and therefore, when I took down the stock and distributed it to the old stockholders, whose names I can give, if necessary, which represented, in my mind, the proper way of doing the business. There was no estimate of the value, or no money paid in. The fact is, at the time of the distribution, the lease had only two years to run; it expired March 16, 1906, and I was retained in the matter of renewal, which occurred on March 3, 1905, one year prior to the expiration.

257 Of course, the stock and property had very little value prior to that time. There was no development on the property to any great amount, and no producers were struck until July 22, 1904, no—June 22, 1904, when the first well, when the first well in the Ochelata pool —. I lived,—resided, in Wisconsin, was practicing law there, and continued so to do, but was connected with the company, down to January 21, 1908.

## Examination by Mr. Reeves:

Q. I believe you testified before the State Board of Equalization, did you not, Mr. Brennan?

A. Yes sir.

Q. And in that testimony, you gave what you thought was the value of this property?

A. The whole property?

Q. Yes sir.

A. Well, I estimated it at Five Hundred Thousand Dollars, but I particularly emphasized the fact that I couldn't float a bond issue for Three Hundred Thousand Dollars. I went into the markets of the world, and finally had to put it up as collateral security for the debts of the company, which amounted to One Hundred Eighty-five Thousand Dollars. Well, I did estimate it at \$500,000.00, which does include the whole property including all the oil production and oil properties. It includes the lease, stock in the company and the good will and franchise of the company and includes the right to do business in the Osage Reservation, as it is now being conducted. In another form it would mean to transfer all of the stock of the company with the governmental consent and acquiescence. In this connection I gave the facts and we furnished all the figures. I particularly emphasized the fact that I could not float a bond issue for \$300,000.00. I went into the markets and finally had to put the bonds up as collateral for the debts of the company, which amounted to \$185,000.00. Our short term of lease was the main trouble. The mortgage and bonds covered the whole business, the lease and the license to do business as well as the property. Since I gave the above figures at the former hearing before the State Board of Equalization, eight months have passed and the time for the ending of the lease is so much nearer.

Q. Is the company considered a valuable oil property at this time?

A. Well, now, that is a glittering generality—yes sir, it is glittering. The stock—I cannot answer that, except that we have not got any market for our stock.

Q. Does the company produce large revenues, large dividends?

A. No, that is the trouble with it, it has produced a dividend of one per cent a year through a period of nine years—a period of eight years.

258 Q. That is on the capitalization of Three Million Five Hundred Thousand Dollars?

A. Yes sir.

Q. Does the territory covered by these leases owned by the company, include that portion of Osage County, which you tell about, which we term the Osage pool?

A. Yes sir; there is one section, 19, in the Osage pool, on which we have no royalties, the best one there.

Q. How does that happen?

A. Well, there was only one-eighth royalty reserved on that splendid property before the renewal act, and our total royalty was

cut down by the renewal act, so it left nothing for us after the Indians' one-eighth.

Q. The Indian nation gets one-eighth of the production?

A. Yes sir.

Q. And then, you get what you can get above that from your subleases?

A. Yes sir. It wouldn't matter to me, if we got royalty from all of it. It is the sublessees which kept the profits from the oil, not our office. I would rather have a small part of a sublessee's property in the Osage, than any interest in the parent company. Some of our sublessee companies are worth a great deal of money. One, I think, is worth Seven Million Dollars, and they do not pay one-third of the taxes we had assessed against us by the assessment board. That company is the Barnsdale Oil Company; another company is the subsidiary of the Standard Company, namely, the Prairie Oil & Gas Company, and I might mention a number of others.

Q. They operate under subleases from your company?

A. They operate under subleases from our company, which are owned absolutely by them, and are approved by the Secretary separate from us, and they have all the working interest. And  
259 their taxes state that they are on their gross receipts, together with taxes on their visible personal property, the same as returned by us, and so, that is the same as it is with all the oil companies in the Cherokee, or in the Osage.

Examination by Mr. Brennan himself:

Q. Did you testify before the Board on a former occasion?

A. Yes sir.

Q. Was there any question about separating the accounts and valuations of the gas business from the oil business?

A. No, but we had no figures before us at that hearing as to the production and receipts from the oil business, and we so told the board, and we were requested and permitted to file statements as to the cost and expense of the production of the oil, and the receipts therefrom, separate and distinct from the cost of the production of the gas and the receipts therefrom, which were subsequently filed, and which I ask the referee and Mr. Reeves, to understand and agree that it is not the tax in this case.

Q. Are you acquainted with the extension of the gas lines, these small surface lines, from the very beginning?

A. Yes.

Q. State what were about the extent of the subleases, held by the different sublessees?

A. They were then, and always have been from three, four, or five miles, to ten, fifteen and twenty miles in extent.

Q. How much does it cost to extend a small line over the surface, a mile, to a producing well, or well to be drilled?

A. About Eleven Hundred Dollars a mile.

Q. Does your company do it in all instances?

A. No. It depended upon the distance and on the agreements between the parties, and as to whether it was feasible or not, to extend a line a certain distance, to assist in the drilling of a well, and a sublessee did not expect it on his part, except as agreed to by the parent company.

Q. Do you have those surface lines over the whole reservation?

A. No, they were extended almost accidentally in the first instance, and from time to time, and the greater part of the production now has no surface line; they carry their own operations on with their own gas, or gas from sources other than us.

Q. Did the parent company hold itself out at any time, as being in the business of furnishing gas to sublessees?

A. No.

Q. Is the town of Avant incorporated?

A. No.

Q. Have you any franchise there?

A. No.

Q. Have you any franchise at Bigheart?

A. No.

Q. Is the town of Bigheart incorporated?

A. I think it is, probably, but we have no franchise there.

Q. What is the size of the surface line you refer to?

A. The size of the line I refer to at Eleven Hundred Dollars a mile, was a three inch line.

Q. Is that the line ordinarily used in conveying gas to these operators' wells?

A. Over the surface. These surface lines are not permanent, they are changeable.

Q. How did you happen to put a line into the people living at Avant?

A. By strong pressure from them, and with no promise or agreement on our part to continue the same. The gas business and the oil business, in our office, is kept entirely separate; easily shown and easily ascertained.

Examination by Mr. Reeves:

Q. Are there any of the stockholders of the Indian Territory Illuminating Oil Company, who own stock in these subleases?

A. Yes.

Q. Then you have what is known as an inter-corporate relation existing between the parent company and the lessees?

A. No: They do not follow, from my answer, in the slightest degree?

Q. Who are the stockholders of the Indian Territory Illuminating Oil Company?

A. John H. Brennan, H. V. Foster, M. F. Stillwell, D. Frost, Wisconsin; T. N. Barnsdale, of Pittsburg; Mechanics Savings Bank of Westover, Rhode Island, a bank in liquidation that first put the money into this field, and went into it themselves upon account of it. We carried them two hundred thousand shares out of that litigation

in 1902, giving them two hundred thousand shares, and they have had it ever since.

Q. Take the stock of Mr. Barnsdale, for instance, he is also a lessee in the company, is he not?

A. He is, he has got one or two small places and is——

Q. And he is also a stockholder, is he not?

A. In the Barnsdale Oil Company? Yes sir.

Q. Then the stockholders, after all, get the benefit of these subleases?

A. They do not. There is about eighty stockholders. There is a few instances, independent propositions entirely.

Mr. Reeves: I think that is all Mr. Brennan.

Examination by Mr. Brennan:

262 Q. Do you know about how many of the stockholders of the Indian Territory Illuminating Oil Company, are stockholders in the companies, which are sublessees under that company, or hold individual leases in their own names?

A. Yes sir.

Q. About how many of the total number of stockholders are interested, either as stockholders in the sublessee companies, or hold individual subleases?

A. I should say offhand, about ten.

Examination by Mr. Reeves:

Q. What proportion of the capital stock of the company do these ten control?

A. I couldn't say.

Q. The major portion of it, or less than one-half?

A. I couldn't say that, Mr. Reeves.

Examination by Mr. Brennan himself:

Q. Is it a fact, that any stockholder in any subcompany, ever suggest in the deliberations or business of the Indian Territory Illuminating Oil Company, as controlling or influencing?

A. No. Our business with the Barnsdale Oil Company is at arm's length, particularly with reference to litigation and all matters and business between us. I don't believe that any lessee gets that. In fact, I know it. I am not only attorney for the company, but have to do with its business, that is one-half of my work, the transaction of its business. A policy of any other kind couldn't be pursued in this case. The property of a stranger might be the most valuable for the parent company to develop.

Q. It is the policy of the parent company to attempt to develop its leases, by subletting it, or by its own operations, in the lines that will increase its revenue?

A. Yes sir. The Indian Territory Illuminating Oil Company has in addition to the subleasing business to which your atten-



263 tion has been called, a system of additional contracts over the subleased property, by which the parent company may go on the subleased property, and drill wells and develop the same, giving the well to the sublessee, if it is oil, and reserving it to the parent company if it is gas.

Examination by Mr. Reeves:

Q. You retain the gas secured then?

A. We retain the gas, and our business in that respect during the last two years has resulted in a disastrous loss, drilling ten wells without getting a foot of gas. We have been unable to pipe gas to Bartlesville, the last ten years, in any very large amount. Mr. Leach can give you the exact description of the gas business, and the depreciation of the wells, even when cased in. The gas depreciates, and is lost by reason of oil operations in the same sand.

Mr. LEACH recalled by the Appellant.

Examination by Mr. Brennan:

Q. When you were on the stand before, in this business, you didn't have before you the figures as to the oil business, and the other business of the company?

A. No sir.

Q. After that, you obtained the same from the books and sent them to the Commission?

A. I did, yes sir.

Q. What would you say as to the value of the Avant plant, as a plant, and the value of the Bigheart plant, as a gas plant?

A. Well, the Avant plant, on account of its character, size of lines, etc., I shouldn't consider to be worth more than, not over Two Thousand Dollars to Twenty-five Hundred Dollars. The Bigheart plant probably might be sold on the market for probably Six Thousand Dollars, not that that would take into account the  
264 good will and the business, not the cost, but the cost and the good will of the business. I would say Seven Thousand Dollars at the outside.

The Indian Territory Illuminating Oil Company introduced in evidence the Act of Congress of March 3, 1905, renewing the so called Foster Lease and the Act of Congress of June 28th, 1906, known as the Allotment Bill and the Act of Congress of February 1891 under which the lease was first made as appears from the U. S. Stat. at Large.

Said Appellant also introduced before the Referee the Map now a part of the record in case No. 2845, and being the same map introduced before the State Board of Equalization on June 29, 1911, and referred to as an exhibit in this cause in the record by said Board.

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*Memorandum of Tax Return for 1911.*

The Indian Territory Illuminating Oil Company returned to the County Assessors a total of..... \$52,830.02

Divided as follows:

Washington County .....	\$22,874.00	
Osage County .....	29,956.02	
		<hr/> \$52,830.02

In addition to the..... \$53,835.10

which was returned to the State Auditor,

Divided as follows:

Osage County .....	\$51,025.10	
Washington County .....	2,810.00	
		<hr/> \$53,835.10

Total value of all property as returned.....\$106,665.12

The Indian Territory Illuminating Oil Company also paid gross revenue tax as follows:

Gross Revenue on oil and gas, tax payable quarterly..	\$1,653.98
Yearly gross revenue on gas only, annual tax on pipe line .....	231.61
	<hr/>

Making a total of..... \$1,855.69

which is in addition to ad valorem taxes above noted as return.

It will be noted that the State levy was 2 mills for 1911 and that the taxes paid by the Indian Territory Illuminating Oil Company as annual gross revenue equals a small fraction over 3 mills on the original cost of the line as appears in the "Record," besides the tax which will be due on advalorem basis and the tax paid by the Indian Territory Illuminating Oil Company on its gas production as gross production tax equals 9 2/3 mills on the original cost of the wells in service as is shown by the "Record" of the cost of these wells in addition to the ad valorem tax to which the wells are subject.

"Exhibit Number 1."





266 *Extract from Annual Return of the Indian Territory Illuminating Oil Co., so Far as Its Business Pertains to Public Service, to the State Auditor of Oklahoma, Showing the Amount of Assessment Rendered, the First Equalization by the State Board, and the Last Equalization, the Latter Amount Being Extended on the Tax Rolls for Osage County, Oklahoma, for the Year 1911.*

Name of township.	School dist.	Amount rendered.	First equalization.	Last equalization ext. tax roll.
Strike Axe (Dist. 12, in Caney Twp.)	12	4,980.50	104,591.00	49,680.00
Strike Axe	13	6,918.30	145,284.00	69,209.00
Black Dog (should be Bigheart Twp.)	13	900.00	18,900.00	8,977.00
Same	28	14,309.80	300,505.00	142,740.00
Same	29	11,490.00	241,290.00	114,612.00
Town of Bigheart	29	3,095.60	650,081.00	308,788.00
Bigheart Twp. (assessed as Black Dog).	43	1,242.00	26,082.00	12,388.00
Same	35	8,088.90	169,864.00	80,565.00

Totals Osage County..... 51,025.10 1,071,525.00 786,959.00

If rate of taxation is the same as last year 25.63/20 mills our tax in Bigheart will be \$7,909.60—orig. cost of plant \$4,136.41.

Gross Receipts at Bigheart Jan. 1 to Dec. 31, 1910, 3,061.51.

This includes gas to Southwestern Refinery which is located outside of town and has independent line not in system.

Receipt for Aug. Sept. & Oct. averaged about \$100 per month for domestic purposes.

"Exhibit Number 2."

267 *Extract from Annual Return of the Indian Territory Illuminating Oil Co., so Far as Its Business Pertains to Public Service, to the State Auditor of Oklahoma, Showing the Amount of Assessment Rendered, the Last Equalization by the Board, the Latter Amount Being Extended on the Tax Rolls for Washington County, Oklahoma, for the Year 1911.*

Name of township.	School dist.	Amount rendered.	First equalization.	Last equalization ext. tax roll.
Lincoln	11	630.00	.....	6,300.00
Madison	15	126.00	.....	1,260.00
Madison	16	54.00	.....	540.00
Dewey	6	1,800.00	.....	18,000.00
Jackson	10	200.00	.....	2,000.00

Totals—Washington County..... 2,810.10 ..... 28,100.00

"Exhibit Number 3."

(Here follows assessment list for 1911, marked pages 268 to 280.)

prior thereto, furnishing some gas to a local corporation in the City of Bartlesville, which held a franchise for and was engaged in the business of selling gas to the residents and citizens of that city, and the same was true at the town of Ochelata, where the local distributing company was furnished certain quantities of gas for use in its business in selling gas to the inhabitants of that place.

#### VIII.

The Indian Territory Illuminating Oil Company had no local franchises at either Bigheart or Avant, for the distribution of gas, and was not engaged in the distribution and sale of gas to the citizens and residents of the other places mentioned.

#### IX.

By the terms of its contract with the Osage Indians, the Indian Territory Illuminating Oil Company, was required to furnish gas free to the Osage citizens and for use in the public institutions of the Osages, under certain conditions named.

#### X.

Said Company has been and is primarily engaged in the business of Oil production in the territory covered by said lease with the Osage Indians, and has conducted its operations in the gas business as an incident to the development of the oil territory and the production of oil, and, to some extent, as a matter of accommodation to the citizens of Bigheart and Avant, and other persons residing along its pipe lines.

#### XI.

Said Company made a sworn return to the State Board of Equalization for the year 1911, of \$53,835.10, as the actual fair cash value of that part of its property engaged in the public service, by reason of the gas business transacted by the Company. This valuation was raised by the State Board of Equalization to \$538,350.00, by action of the Board on the 30th day of August, 1911.

#### XII.

Said Company returned its property to the local assessors of Osage and Washington Counties, for the year 1911, at \$52,830.02, at which the same was assessed.

#### XIII.

All the property owned by said Company and used in the conduct of its business is located in Osage and Washington Counties, Oklahoma, and all its business operations are conducted in said State.

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#### XIV.

The total value of said Company's stock, including all its property, tangible and intangible, on the first day of February, 1911, was \$500,000.00.

## XV.

The amounts returned by said Company to the local assessors of Osage and Washington Counties, and to the State Board of Equalization, do not include the lease, sub-leases, contracts and franchises of the Company, but only its physical properties, such as pipes, pipe lines and accessories, furniture, cash, account and bills receiveable, it being contended by said Company that its lease, sub-leases, contracts and franchises are not subject to taxation by the State of Oklahoma.

## XVI.

The total value of the Indian Territory Illuminating Oil Company's property of every kind located in Oklahoma, over and above the amount locally assessed, was \$447,169.98, on February 1, 1911.

## XVII.

The gas business, as heretofore conducted by said Company, has not been, of itself, profitable, but it has been and is valuable as an adjunct to the Company's oil operations.

*Conclusions of Law.*

288 I beg leave to report the following conclusions of law in this case, based upon the findings of fact as above set forth and stated.

## I.

The Indian Territory Illuminating Oil Company is liable for taxation by the State of Oklahoma, for the full value of its property, tangible and intangible,—that is, for the sum of \$500,000.00.

## II.

I conclude that the Indian Territory Illuminating Oil Company is not exempt from taxation upon the theory that it is a Federal agent or that it holds a franchise from the Federal Government, but that the Act of Congress under which the contract with the Osage Indians was authorized and extended to the 16th day of March, 1916, was not entered into for the purpose of using said Indian Territory Illuminating Oil Company, as a Federal agent, or in the discharge of any governmental duty or function. In my opinion, the Act of Congress did not enlarge in any way, or in any way affect the powers of the Indian Territory Illuminating Oil Company, to make a contract. It was free to do that at any time, but this Act of Congress simply made the Osage Tribe of Indians eligible to enter into a contract on their part. The purpose of the Government was to see to it that said tribe of Indians was fairly dealt with and properly treated. They were allowed, with the supervision, and subject to the approval, of the Government, to make the contract for themselves. It was their contract, not the government's.



## III.

Said Company in the transaction of its business in Oklahoma, is a public service corporation on account of the nature of the gas business transacted by it, and by submitting its report to the State Board of Equalization as a public service corporation, and admitting to that Board its liability to be assessed for taxation, by said Board, is estopped to deny that it is engaged in the public service.

## IV.

That part of the property of said Company which is used in the production of oil and in the oil business, is not engaged in the public service, but the two kinds of business transacted by said Company, one dealing with oil and the other with gas, are so closely intermingled that it is impossible to say just what part of the total valuation of the Company should be assessed by the State Board of Equalization as engaged in the public service and what part should be assessed by the local assessors of the counties in which the property of the Company is located.

## V.

It is immaterial so far as the amount of taxes that must be paid is concerned, or the manner of the payment of the taxes, or the time in which said taxes must be paid, whether the assessment of said Company is made by the State Board of Equalization or by the County Boards of the counties in which its property is located.

## VI.

Said County Boards of Assessors, upon the report of said Company having assessed its property in those counties connected with the oil business, at \$52,830.02, and that assessment having become final, it is fair and just that the remaining property of the Company should be assessed at the sum of \$447,169.98, said sum being the difference between the total valuation of the Company's property and the amount returned to the local assessors of Osage and Washington Counties.

I recommend that a judgment be entered fixing the assessment upon the Indian Territory Illuminating Oil Company's property, for taxation for the year 1911, at said sum of \$447,169.98.

I have not kept an accurate account of time spent in the consideration of this case, but I have spent more than ten days' time in the hearing and consideration of the evidence, records, argument of counsel, and in the investigation of authorities connected with its determination, and I respectfully request the Court to make such order for my compensation as may be fair, all of which is respectfully submitted.

I return herewith a transcript of all the evidence taken before me as Referee in this case, and request that the same be considered as a part of this report.

R. M. CAMPBELL, *Referee.*

291 To which findings of fact and conclusions of law, the appellant duly excepted, and exception was duly allowed.

The appellant thereupon filed its written request for findings of fact and conclusions of law, and requested that they be approved and adopted as findings of fact and conclusions of law in this case, as follows, to-wit:

292 In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY  
ILLUMINATING OIL COMPANY.

Appeal from the Decision of the State Board of Equalization.

Requests by the Indian Territory Illuminating Oil Company that the Honorable Referee herein find as follows as findings of fact and conclusions of law, and approves and adopts the same as findings in this case:

*Findings of Fact.*

*First.*

That the Indian Territory Illuminating Oil Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, duly authorized to do business in the State of Oklahoma and having its principal office and all of its business and property in the State of Oklahoma.

*Second.*

That in March, 1896, the assignor of said Indian Territory Illuminating Oil Company was granted a lease for mining purposes over the entire Osage Indian Reservation, by virtue of an Act of Congress of February, 1891, providing that such lands could be leased  
293 for mining purposes in such quantities and upon such terms and conditions as the agent in charge of said Reservation may recommend, subject to the approval of the Secretary of the Interior. That said lease granted to said assignor the privilege or license to explore and mine said Reservation for oil and natural gas.

*Third.*

That prior to March 3, 1905, viz: in January, 1902, the Indian Territory Illuminating Oil Company became the owner of said lease and entered upon a policy of subleasing the same to various firms, individuals and corporations, so that at the time of the trial and hearing of this action there were one hundred and fifteen sub-lessees, and by December 21, 1904, there were six hundred and eighty thousand acres out of the whole reservation that were so subleased. Said

subleases, practically assigned to the sublessee—certain parts of the territory with the right to explore for oil and yield a one-sixth royalty to the Indian Territory Illuminating Oil Company. Prior to March 3, 1905, the said company paid the Osage Indian tribe a royalty of one-tenth, but by the Act of Congress of March 3, 1905, complemented by the decision of the President making said royalty greater, the said Indian Territory Illuminating Oil Company was paying said Indian tribe one-eighth royalty since March, 1906, and therefore receiving for its own part of the royalty from said sublessees one twenty-fourth of the oil production.

#### Fourth.

That said lease would expire by its own terms in March, 1906, but by Act of Congress of March 3, 1905, the Congress of the United States extended said lease to the extent only of such portion as had been subleased, viz., 680,000 acres, as follows:

“That any allotment which may be made of the Osage Reservation, in Oklahoma Territory, shall be made subject to the  
294 terms and conditions of the lease herein authorized, the same being a renewal as to a part of the premises covered by a certain lease dated March 16th, 1896, given by the Osage Nation of Indians to Edwin B. Foster, and approved by the Secretary of the Interior and now owned by the Indian Territory Illuminating Oil Company under assignments approved by the Secretary of the Interior, which said leases and all sub-leases thereof duly executed on or before December 31, 1904, or executed after that date based upon contracts made prior thereof, and which have been or shall be approved by the Secretary of the Interior to the extent of 680,000 acres in the aggregate are hereby extended for a period of ten years from the 16th day of March, 1906, with all the conditions of said original lease except that from and after the 16th day of March, 1906, the royalty to be paid on gas shall be one hundred dollars per annum on each gas well instead of fifty dollars as now provided in said lease; and except that the President of the United States shall determine the amount of royalty to be paid for oil. Such determination shall be evidenced by filing with the Secretary of the Interior on or before the 31st day of December, 1905, such determination; and the Secretary of the Interior shall immediately mail to the Indian Territory Illuminating Oil Company and each sublessee a copy thereof.”

#### Fifth.

The Indian Territory Illuminating Oil Company was organized by promoters in 1902, at \$3,500,000.00 capital stock, par value, and the lease was the sole consideration for said stock. Litigation ensued between the old owners and said promoters which resulted favorably to the old owners, and said owners took over said stock in lieu of said property. Said stock was transferred and distributed to the old stockholders or old owners about two years prior to the expiration of the lease in 1906, viz., in 1904, which was prior to the Act of Renewal by Congress of March 3, 1905.

## Sixth.

That said stock had very little or no value at that time. There was no development on the property to any great amount and no great oil producers were found until June 22, 1904, when the first well was produced in the so-called Ochelata pool.

## Seventh.

295 That in order to secure production and the drilling of wells and furnish cheap fuel, the Indian Territory Illuminating Oil Company laid some small two inch and three inch pipe-line on the surface of the ground and conducted gas from gas wells to its sublessees who were drilling wells. These lines were temporary and superficial, and so laid on the ground as to be easily removed from one point to the other; and said company furnished said sublessees gas for fuel for drilling wells and operating leases at a flat rate, or at a certain price per well, which resulted in a loss to said Indian Territory Illuminating Oil Company, as far as said gas operations were concerned; but that said lines were built primarily for the purpose of encouraging and securing development so as to comply with the terms of the original lease hereinbefore referred to.

## Eighth.

That said company did not hold itself out as being able and willing to furnish said gas in such manner to all sublessees, but entered into a contract with each one separately, depending on the location of the drilling, the cost of laying said line, the proximity of the gas well and the desirability of securing development at the particular point in question, and that said business had been conducted by it with certain of its sublessees in the eastern part of the 680,000 acres, which were first developed, commencing in 1904.

## Ninth.

That said company did not continue said business of piping gas to its sublessees in the western part of the 680,000 acres near Osage Junction, where the heaviest production was found, by reason of the expense and loss consequent upon the operation of that system.

## Tenth.

296 That said company did not extend said lines in all instances, but it depended also upon the distance and the agreement between the parties and that a sublessee did not expect it on his part except as agreed to by the company. They were extended almost accidentally in the first instance and from time to time. The greater part of the production now has no surface lines but they carry on their own operations with their own gas, or from sources other than said company.

## Eleventh.

That said company did not hold itself out at any time as being in the business of furnishing gas to sublessees, generally.

## Twelfth.

Said lines were extended into the towns of Avant and Bigheart, being small settlements of people, but without any franchise granted to said company. The same were extended at the solicitation of said people, but with no promise or agreement on the part of the company to continue the same.

## Thirteenth.

That the actual cost of said lines involved in this controversy, through which gas was so transported, was \$7,668.91, and the company has conducted a gas business through said lines as herein indicated at a yearly loss to itself and without profit, except as such gas business may have induced development of the fields for oil.

## Fourteenth.

The actual original cost of the gas line in Avant was \$1,625.18; in Bigheart was \$4,137.41, and the lines to the producers \$70,918.32. These lines have been put in from time to time for five or six years prior to the hearing and were returned at \$53,835.10. Therefore, this referee finds the value of said lines at such time at \$53,835.10.

## Fifteenth.

Considered as a business and going concern, the Bigheart plant was and is worth \$7,000.00, and the Avant plant was and is worth not more than \$2,500.00.

## Sixteenth.

Said company has no substantial, large pipe-line that will accommodate any large quantity of gas for any great distance.

## Seventeenth.

That the total actual value of all the gas-pipe lines and similar physical property in said gas business is \$53,835.10.

## Eighteenth.

The gas business and the oil business in the office of said company is kept entirely separate, is easily accessible and easily ascertainable.

## Nineteenth.

That the company showed its receipts and disbursements from the sale of gas in such business separate from oil for several years prior to the time of the hearing before the Board and down to May 31, 1911.

For the year 1910 the receipts were.....	\$35,947.45
And disbursements .....	41,700.89
Showing a loss of.....	5,753.44

The loss by said company in said business for five years amounted to .....	50,030.10
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## Twentieth.

298 That on the 22nd day of March, 1911, the said company duly filed with the State Auditor of the State of Oklahoma, as provided by law, a return and schedule of the amount and value of its property in the State of Oklahoma subject to taxation for the information of the State Board of Equalization in making its assessment of the property of said company, as provided by law.

That said return was in regular form and showed a valuation of \$53,835.10. That thereafter on the 18th day of April, 1911, Chas. F. Leach, manager of said company, appeared before said Board and gave his evidence with reference to the figures contained in said return. That the statement of said manager was confined to the gas pipe-line and gas business of said company and that his examination by the members of said Board was confined to said business and there was no intimation by said Board of including all the oil business of said company in an assessment to be made by said Board as a public service business.

## Twenty-first.

Thereafter on May 16, 1911, said Board of Equalization, without any further testimony, and without notice, raised and fixed the assessment of said company at \$1,130,535.00, but gave no reason to said company for said raise, nor the principle upon which it was based.

## Twenty-second.

That prior to said hearing the said company had been yearly taxed as a public service corporation on said gas pipe-line solely.

## Twenty-third.

That on the 29th day of June, 1911, the said company asked for and obtained a hearing before said Board and introduced the evidence of witnesses in its behalf, together with statements and figures

299 supporting such testimony, which was confined to said gas lines and gas business, until said Board then went into an inquiry as to the oil business of the company. The witness not being fortified at said hearing with reference to the figures concerning said oil business requested to be permitted to make a statement thereof and file the same, or to appear again before the Board, which was granted.

#### Twenty-fourth.

That on the 17th day of July, 1911, counsel for the company appeared before said Board and offered to enlighten the Board upon any subject that it desired with reference to said assessment.

#### Twenty-fifth.

That on the 2nd day of August, 1911, the said company submitted full, complete and ample statements of the oil business and gas business separately of the company for each year for several years prior to 1910, and also for the year of 1910. That said Board introduced no witnesses and did not ask or inquire further into the business of the company as disclosed by said statements.

#### Twenty-sixth.

On the 23rd. day of March, 1912, the said company appeared before the Referee herein with its witnesses, who were duly sworn, and the State of Oklahoma introduced no evidence, and did not cross-examine the witnesses for said company with reference to said statements showing the separate nature of the gas and oil business, but all of which were introduced in evidence before this referee.

#### Twenty-seventh.

That said company is primarily in the oil business and the greatest part of its receipts and profits are from the royalties derived from the exclusive oil operations of its sublessees—being oil royalties exclusively.

300

#### Twenty-eighth.

That the Indian Territory Illuminating Oil Company received a royalty from oil alone from all its sublessees, being the one-twenty-fourth part, in 1910, to the value of.. \$94,802.22

That it operated some oil leases directly itself for oil and received:

From Lot Number 32.....	21,362.13
From Lot Number 293.....	1,916.34
From Lot Number 275.....	606.80

So that its total income from oil alone for the year 1910 was .....	\$118,687.49
And the expense of such oil production was.....	36,593.19



## Twenty-ninth.

That from the leases that it operates itself it sells its oil direct to the pipe-line company and said company settles with the Indian Territory Illuminating Oil Company and the Osage Tribe of Indians separately, and as to said royalties account it is paid direct to the Indian Territory Illuminating Oil Company by the pipe-line company.

## Thirtieth.

That said company has paid all taxes under the revenue law of the State of Oklahoma the same as other oil and gas companies, as is customary throughout the gas and oil country, and has returned its physical properties in the oil business to the local assessor and has paid its production tax from time to time.

## Thirty-first.

301 That many of the sublessee companies under the Indian Territory Illuminating Oil Company on the Osage lease are very heavy producers of oil, to a much greater extent and volume than is said Indian Territory Illuminating Oil Company, and the value of said properties of said sublessees so engaged is far in excess of that of said Indian Territory Illuminating Oil Company, and that said companies do not pay taxes as public service corporations, and do not pay taxes on the value of their leases, but return and pay on their physical properties only.

## Thirty-second.

That the said Indian Territory Illuminating Oil Company is now and has been at all times operating under said lease through said Act of Congress and under the Rules and Regulations of the Department of the Interior, introduced in evidence in this case, wherein and whereby said Department supervises the conduct of the business in the field with said Indian Tribe and the said Department of the Interior has its inspectors and other officers in charge.

The above request for special findings of fact presented to me this 10th day of Oct., 1912. Said findings numbered 15, 16, 17, 18, 19, 28, 30 and 32, respectively are allowed by me and made part of my report in said cause as findings of fact, and the State of Oklahoma is allowed an exception. The remaining special findings above set forth are disallowed and refused as findings of fact in said cause, and the Indian Territory Illuminating Oil Company is allowed an exception to such refusal. I beg to transmit all of said requested findings to the Court.

R. M. CAMPBELL, *Referee.*

*Conclusions of Law.***First.**

That the Indian Territory Illuminating Oil Company is not a public service corporation so as to be assessible by the State Board of Assessors in the State of Oklahoma. That its gas business, as disclosed by the evidence, is subsidiary to its oil business and is mainly for the purpose of facilitating the performance of the conditions of its lease of a part of the Osage Reservation renewed by Act of Congress, March 3, 1905.

**Second.**

That the small business accorded to and done with the scattered householders in Avant and Bigheart is too small for separate consideration as a public service, as there are no franchises and no obligations on the company to perform any duty and what gas is served in said places is subordinate to the demands and necessities of the field operators doing business under said governmental lease of license.

**Third.**

That the gas line and gas business of the Indian Territory Illuminating Oil Company employed and engaged in serving field operators under said lease is not a public service and should not be taxed as such.

**Fourth.**

That the value of the lines employed in said service to field operators is \$70,918.32. That the value of the oil business, oil production or oil property of the Indian Territory Illuminating Oil Company should not be assessed by the State Board of Assessors as a public service business. That the lease of the Indian Territory Illuminating Oil Company will expire in March, 1916, and that said company has no legal right to extension or renewal, and that the value of its intangible properties is very difficult to ascertain. That the larger value consists of the right of the said lessee of exploring for the oil and gas on a part of the property of said Indians Tribe—not vesting in the grantee any estate in the land or oil or gas but merely a license in the nature of an incorporeal hereditament.

**Fifth.**

That such right or license or privilege granted by said original lease so renewed by Act of Congress is not taxable under the laws of the State of Oklahoma, either by the local officers in the different counties or by the State Board, and the legislature of the State of Oklahoma has made no provision for the assessing and taxation of oil leases whether lying in public or private grant, except that the physical properties shall be assessed and taxed and a gross production tax paid by all oil companies.

## Sixth.

The Indian Territory Illuminating Oil Company operating under said lease is engaged as a Federal Agent, in a Federal business, within a jurisdiction controlled solely by Congress, as Congress has jurisdiction exclusively over commerce with Indian tribes, under the provision of the National Constitution quoted and relied upon in this case by the Indian Territory Illuminating Oil Company. That Congress in the conduct of the business and property of said Osage Tribe of Indians has seen fit, by Act of Congress, and without the consent or approval of any other person or body, to renew and grant this same original lease for ten years from March 16, 1906; that the operations and business conducted thereunder are under the direct supervision and superintendence of the Department of the Interior and that the Osage Tribe of Indians have a far greater interest in the conduct of said business than has the Indian Territory Illuminating Oil Company, as the said Osage Tribe of Indians receives one-eighth of the royalty and the Indian Territory Illuminating Oil Company only one twenty-fourth.

Said lease grants the privilege, license or right to prospect for oil and gas and the occupation, business or operations of said company is the license or privilege so granted by the Federal government, and the State of Oklahoma is without authority to law a tax upon the operation, business or privileges of said Federal agent; except that said tax can be laid upon the physical property only of said agent. The valuation fixed by the State Board of Assessors in this case included all of said rights, grants, privileges and licenses.

The amount at which the property of the Indian Territory Illuminating Oil Company was fixed includes all these rights, and privileges and occupation commingled with the physical property and renders the whole assessment void.

The Referee recommends that judgment be entered declaring void the assessment of the Indian Territory Illuminating Oil Company.

Respectfully submitted,

INDIAN TERRITORY ILLUMINATING  
OIL CO.,

By JOHN H. BRENNAN, *Attorney.*

The above conclusions of law presented to me this 10th day of Oct., 1912, by Indian Territory Illuminating Oil Company, Appellant, with the request that they be approved and adopted as conclusions of law in said cause. Said request is refused and exceptions allowed to said Appellant. I beg to transmit the same to the Court for consideration.

R. M. CAMPBELL, *Referee.*

And upon the 10th day of October, 1912, the Honorable Referee, entered his orders as follows, to-wit:

*As to Findings of Fact.*

The above request for special findings of fact presented to me this 10th day of Oct., 1912, said findings Numbered 15, 16, 17, 18, 19, 28 and 32 respectively are allowed by me, and made part of my report in said cause as findings of fact and the State of Oklahoma is allowed an exception. The remaining special findings above set forth are disallowed and refused as findings of fact in said cause, and the Indian Territory Illuminating Oil Company is allowed an exception to such refusal. I beg to transmit all of said requested findings to the Court.

R. M. CAMPBELL, *Referee.*

*As to Conclusions of Law.*

The above conclusions of law presented to me this 10th day of Oct., 1912, by Indian Territory Illuminating Oil Company, appellant, with the request that they be approved and adopted as conclusions of law in said cause. Said request is refused, and exceptions allowed to said appellant.

I beg to transmit the same to the Court for consideration.

R. M. CAMPBELL, *Referee.*

306 The appellant saved and was allowed its exceptions as indicated in the foregoing orders.

307 In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY  
ILLUMINATING OIL COMPANY.

Appeal from the Decision of the State Board of Equalization.

*Motion for New Trial.*

Comes now the said Indian Territory Illuminating Oil Company, and moves the Honorable Referee to vacate and set aside his report of findings of fact and conclusions of law rendered herein, and to grant a new trial, for the following causes which affect materially the substantial rights of said appellant:

First. Irregularity in the proceedings of the Referee, or prevailing party, or any order of the referee, or abuse of discretion, by which the said appellant was prevented from having a fair trial.

Second. That the findings and report are not sustained by sufficient evidence, or is contrary to law.

Third. Error of law occurring at the trial and excepted to by the appellant.

Fourth. Error of the referee in refusing to allow and approve the requested findings of fact and conclusions of law made by appellant.

JOHN H. BRENNAN,  
*Attorney for Appellant.*

1008 The Referee overruled the aforesaid motion for new trial, to which plaintiff duly excepted, and exceptance was allowed.

1009 Thereupon, appellant tendered this bill of exceptions to the action of the referee, in the various particulars therein set out, which is signed by appellant, and made a part of the record in this case, this the 11th day of October, 1912.

JOHN H. BRENNAN,  
*Attorney for Appellant.*

We, the undersigned attorneys for the State of Oklahoma, appellee, in the above entitled cause, hereby waive the suggestions of any amendments to the foregoing bill of exceptions and waive the service of same on us, and hereby consent that the same may be settled and signed as a true and correct bill of exceptions in said cause, without further notice to us of the time and place of such signing and settling by the referee who tried said cause.

Witness, our hands, this the 11th day of October, 1912.

W. C. REEVES,  
*Ass't Att'y Gen.,*  
*Attorneys for Appellee.*

1010 I, hereby certify that the above and foregoing bill of exceptions contains true, full, correct and complete copies of all the pleadings, motions, orders and proceedings had, made and rendered in said cause, and contains all the evidence, both oral and documentary, introduced or offered before me at the trial, or hearings of said cause, together with the objections of counsel thereto, the rulings of the referee thereon and exceptions thereto.

R. M. CAMPBELL, *Referee.*

1011 I, R. M. Campbell, referee who tried the above entitled cause, do hereby certify that the above and foregoing has been presented to me as a true and correct bill of exceptions made in the cause above entitled, and it appearing to me that the same is a true and correct bill of exceptions in proper form,

Therefore, I do hereby settle, allow, certify and sign the same as a true and correct bill of exceptions in said cause, and order and direct that the same be, and is hereby made a part of the record in this case.

Witness my hand, in the City of Oklahoma City, Oklahoma County, State of Oklahoma, this the 11th day of October, 1912.

R. M. CAMPBELL, *Referee.*

Endorsed on back: Filed this 11th day of Oct. 1912. R. M. Campbell, Referee.

312 In the Supreme Court of the State of Oklahoma.

No. 3240.

In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY  
ILLUMINATING OIL COMPANY.

Appeal from the State Board of Equalization.

*Stipulation.*

Entered into by and between Charles West, Attorney General of the State of Oklahoma, appellee, and Brennan, Kane & Michaelson, Attorneys for Indian Territory Illuminating Oil Company, appellant.

313 In the Matter of the ASSESSMENT OF THE INDIAN TERRITORY  
ILLUMINATING OIL COMPANY by the State Board of As-  
sessors.

On the — day of —, 1912, appeared before the Referee in the above entitled cause, John H. Brennan, (he having been previously duly sworn as a witness in this case) and stated that the proposition to assess the Indian Territory Illuminating Oil Company on its intangible assets, or lease, aside from its physical properties as an asset which should have been assessed any way, and upon which taxes should be paid regardless of the Public Service nature of the business—was a new question in the case as far as he was concerned, and thereupon the witness stated that the Indian Territory Illuminating Oil Company paid all its taxes on its physical properties and its gross production tax the same as any other oil company in the oil and gas fields in Oklahoma, and that the witness did not desire the Referee to understand that said Company was neglecting to pay taxes to any less extent than any other oil company and that the manner adopted and pursued by the Indian Territory Illuminating Oil Company in returning its property for assessment locally, viz: on its physical properties only and by paying the gross production tax was customary throughout the oil and gas bearing fields—that some of the sub-lessee companies in the Osage were worth more than the Indian Territory Illuminating Oil Company and that all said companies would escape the particular burden imposed in this case if such rule were followed as to this Company. That the witness was familiar with the manner of the assessment of oil companies in Osage, Washington and Tulsa counties particularly, and that he was interested as counsel in the tax ferret cases pending

314 which involve this very question.

Thereupon, the Assistant Attorney General objected to this testimony as incompetent, irrelevant and immaterial, and even if true would have no bearing upon liability of the Indian Territory Illuminating Oil Company.

I, R. M. Campbell, referee in the above entitled cause, hereby certify that the above and foregoing is a true and correct record of certain testimony taken and proceedings had before me in the trial of said cause, and said testimony was considered by me in making findings of fact and law in said cause. That by error, same was omitted from my record heretofore filed in said cause.

R. M. CAMPBELL, *Referee.*

It is hereby stipulated and agreed that the above and foregoing record of testimony and proceedings taken and had before the Honorable R. M. Campbell, the referee in the above entitled cause, and by error omitted from referee's report, and appellant's bill of exceptions, shall be considered a part of the record in said cause, the same in every particular as if included in the referee's return, and to be considered by the Supreme Court, the same and with equal force and effect as if included in the bill of exceptions of appellant heretofore filed in said cause.

CHARLES WEST,

*Attorney General;*

W. C. REEVES,

*Ass't Attorney General,*

*Attorneys for Appellee.*

BRENNAN, KANE & MICHAELSON,

*Attorneys for Appellant.*

Endorsed: No. 3240. In the Matter of the Assessment of the Indian Territory Illuminating Oil Company, Appealed from the State Board of Equalization. Stipulation. Filed Oct. 28, 1912. W. H. L. Campbell, Clerk. John H. Brennan, Bartlesville, Okla. (Sustained.)

315 And, thereafter towit, on November 12, 1912, there was made and entered the following order.

Supreme Court, September Term, 1912, November 12th, 1912,  
Twenty-fourth Judicial Day.

# 3240.

In re Assessment Ind. Ter. Ill. Oil Co.

And now on this day it is ordered by the Court that the stipulation filed herein on October 28, 1912, be, and the same is hereby allowed.

316 And thereafter, to-wit, on December 9, 1912, there was made and entered the following order.



Supreme Court, December Term, 1912, December 9th, 1912, Sixth Judicial Day.

# 3240.

In re Indian Territory Illuminating Oil Co., etc.

And now on this day the above cause is continued until the next term of court.

317 And thereafter, towit, on March 11, 1913, there was made and entered the following order.

Supreme Court, March Term, 1913, March 11th, 1913, First Judicial Day.

# 3240.

In re Assessment Property Ind. Ter. Ill. Oil Co.

And now on this day it is ordered by the Court that James B. Diggs, be allowed to file briefs amicus curiae in the above entitled cause, instanter.

318 And thereafter, to-wit, on March 12, 1913, there was made and entered the following order.

Supreme Court, March Term, 1913, March 12th, 1913, Second Judicial Day.

# 3240.

In re Assessment Property Ind. Ter. Ill. Oil Co.

And now on this day the above cause is argued orally and submitted, and it is ordered by the Court that the Attorney General may file brief on or before March 20, 1913, on behalf of the State; it is further ordered by the Court that A. C. Cruce and Dillard & Blake be allowed until March 20, 1913 to file briefs amicus curiae.

319 In the Supreme Court of the State of Oklahoma.

No. 3240.

in the Matter of the Assessment of the Indian Territory Illuminating Oil Company by the State Board of Equalization.

*Motion.*

Whereas, the above entitled matter was heretofore referred to R. M. Campbell, Referee, who has made and filed his report in this court, with his findings of fact and conclusions of law, and,

Whereas, a Bill of Exceptions was duly prepared and filed in this court showing at length that the Indian Territory Illuminating Oil Company duly made the requests, in writing, of said Referee, that he find certain facts and certain conclusions of law, which said findings of fact and conclusions of law so requested were set forth in said record herein, and,

Whereas, the said Company made a motion for a new trial before said Referee, which was denied—the said Referee substantially deciding all the conclusions of law against said Company and adopting some of said Company's proposed findings of fact, and,

Whereas, exceptions were taken by said Company to the refusal of said Referee to find as requested, and exceptions were duly taken to the findings of fact and conclusions of law finally filed by said Referee;

320 Now, therefore, the said Indian Territory Illuminating Oil Company, by its counsel, appears in the above entitled cause and moves said court to set aside the finding of fact and conclusions of law so made and entered by said Referee, and moves this court to find the facts and make conclusions of law as requested of said Referee by said Company. That for more specific reference to said findings of fact and conclusions of law made by said Referee, which said Company requests be set aside, reference is hereby made to the Bill of Exceptions filed in this court, and the same reference is hereby made for the specific requests by said Company to find the facts and the law in its favor as being set forth specifically by said Referee in his said report and said Bill of Exceptions, and that this Company moves this court to set aside the finding of said Referee and to hold that the assessment of said Company by the said State Board of Equalization was and is void.

Signed this 11th. day of March, 1913.

BRENNAN, KANE, MICHAELSON &  
McCOY,

*Counsel for Indian Territory  
Illuminating Oil Company.*

Endorsed: No. 3240. In the matter of the Assessment of the Indian Territory Illuminating Oil Company. Motion. Filed Mar. 25, 1913. W. H. L. Campbell, Clerk.

Acceptance of service. I hereby accept service of the within motion on this the 25th day of March, 1913. Chas. West, Attorney General. By W. C. Reeves, Asst. Atty. Gen.

321 And thereafter, to-wit, on March 10, 1914, there was made and entered the following order.

Supreme Court, January Term, 1914, March 10th, 1914, Twenty-fifth Judicial Day.

# 3240.

In re Assessment of the Property of the I. T. Ill. Oil Co., etc.

And now on this day it is ordered by the Court that the order of submission heretofore entered in the above cause, be, and the same is hereby set aside, and the cause is re-submitted as of this date.

# 3240.

In re Assessment of the Property of the Indian Territory Ill. Oil Co., etc.

And now this cause comes on for final decision and determination by the court upon the record and the briefs, and reports of the referee filed herein.

And the court having considered the same finds that the report of the referee in the above cause should be confirmed.

It is therefore ordered and adjudged by the court that the report of the referee in the above cause, be, and the same is hereby confirmed, and the judgment of this court is that the property of appellant be assessed as recommended by the referee in his report.

Opinion by Hayes, C. J.

Kane and Loofbourrow, JJ., concur; Turner J., concurs, except in last proposition discussed.

Williams, J: I dissent from that part of the opinion which holds that the State Board of Equalization has power to assess such property of the appellant as is not necessary to or reasonably incidental to the carrying on of its public service business. It is my opinion that all such property should be assessed by the local or county officer or board, and not the State Board. With this exception, I concur in the opinion.

322 Filed Mar. 10, 1914. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 3240.

In re Assessment of the Indian Territory Illuminating Oil Company.

*Syllabus.*

1. Evidence examined and held sufficient to sustain the finding of the referee that appellant is a public service corporation.

2. Section 21, article 10, Const., makes it the duty of the State Board of Equalization to "assess all railroad and public service corporation property." By the foregoing provision of the Constitution, it is made the duty of the State Board of Equalization to assess all the property of any public service corporation, including property not used in the public service, as well as that used in the public service.

3. An oil and gas mining lease which grants to the lessee the right and privilege to go upon land for the purpose of exploring for oil or gas and to produce oil and gas and transport the same from the leased premises in consideration of payment as royalty to the lessor a part of the oil discovered and a stipulated price for each well producing gas, does not vest in the lessee any estate in the land or oil or gas, but does grant a right or privilege in the nature of an incorporeal hereditament which appertains to the land.

4. By section 7541, Comp. Laws, 1909, all property in the state, whether real or personal, not exempted by statute or constitutional provision from taxation, is subject to taxation; and by section 7544, all rights or privileges that in any wise appertain to land are required to be taxed as real estate.

5. By reason of the foregoing statutes and section 7547, Comp. Laws, 1909, which requires all property to be assessed in the name of the owner thereof, an oil and gas mining lease should be assessed as the property of and in the name of the owner of such lease, and not as the property of and in the name of the lessor.

6. A statute of the state which authorizes and directs the levy of an ad valorem tax upon an oil and gas mining lease from the Osage Tribe of Indians, approved by the Secretary of the Interior and extended by an act of Congress upon lands of such tribe of Indians is not void upon the ground that the lessee or his grantee is a federal agent or upon the ground that such tax is a direct burden upon or interferes with the power of Congress to regulate commerce with the Indian tribes.

Appeal from the State Board of Equalization.

Hon. R. M. Campbell, Referee.

Affirmed.

Brennan, Kane & Michaelson and Hayes McCoy, Attorneys for Petitioner.

Charles West, Att'y Gen., and W. C. Reeves, Ass't Att'y Gen., Attorneys for the State.

Preston C. West, Gilbert & Bond, Stuart, Cruce & Gilbert, Dilard & Blake, James B. Diggs and Henry McGraw, Amici Curiae.

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*Opinion of the Court by Hayes, C. J.*

This is an appeal under Chapter 87, Laws, 1910, by the Indian Territory Illuminating Oil Company from the assessment made by the State Board of Equalization, whereby all the property of said company was assessed as the property of a public service corporation in the first instance at \$1,130,535. Thereafter, after a hearing before said Board, said property was assessed at \$538,350. The return made by the company to the State Board of Equalization for assessment showed the valuation of its property to be \$53,835.10. The final assessment made by the State Board of Equalization raises the valuation of its property from said sum of \$53,835.10 to \$538,350. After the appeal had been perfected to this court, the cause was referred to the Hon. R. M. Campbell, of Oklahoma City, as referee in the case to report findings of fact and his conclusions of law thereon. Upon the evidence taken before him and facts agreed to by stipulation of the parties, the referee has filed his report, which we are asked by counsel for the State to confirm, and to which objections have been made by counsel for the company.

A consideration of the questions of law presented by the proceeding can be made more effectively by stating substantially the material facts found by the referee. The Indian Territory Illuminating Oil Company is a corporation, organized under and by virtue of the laws of New Jersey, with a capital stock of \$3,500,000. On the 16th day of March, 1896, the company entered into a contract with one Edwin B. Foster, by the terms of which said Foster secured a blanket lease upon the lands in Oklahoma Territory, known as the Osage Indian Reservation, which granted to him the privilege of prospecting, drilling wells and mining and producing petroleum and natural gas. This lease, which was for a period of ten years, was approved by the Secretary of the Interior, and would have expired March, 1906; but, under an act of Congress, of date March 3rd, 1905,  
 324 (33 U. S. Stat. at L. p. 1061), this lease was extended as to 680,000 acres of said land for a further period of ten years from the date of its original expiration, and by the terms of said extension, will expire on the 16th day of March, 1916. Prior to the time said lease was extended, the Indian Territory Illuminating Oil Company acquired the lease from the original lessee, and had sublet

to one hundred or more persons and corporations most of the lands covered by the lease as extended on March 3rd, 1905; and operations on said land for discovering and producing oil have been and are being conducted largely by such lessees. A small portion of said tract—the amount of which is not made to appear from the evidence, or from the findings of the referee—is operated by the company. By the terms of the lease contract with the Osage Tribe of Indians, as extended, the sublessees are required to pay a royalty of one-sixth of the oil produced by the property covered by the lease, of which one twenty-fourth goes to the company, and three twenty-fourths, or one eighth, to the Osage Indians. The payments to the Osage Indians are made to the United States Indian Agency for the Osage Indians at Pawhuska, under and by virtue of rules and regulations promulgated by the Department of the Interior. The company has laid pipe lines upon and across the lands covered by the lease for conveying natural gas, and has been engaged in furnishing natural gas to its sublessees for use as a fuel for drilling and pumping operations in drilling and producing oil and gas upon said leased premises; and the company has been further engaged in furnishing gas for domestic consumption to the citizens and residents of two small towns, located in said reservation adjacent to the lines of the company, and was engaged in furnishing gas to other customers whom we need not mention in detail. The company has been and is primarily engaged in the business of oil production in the territory covered by said lease.

325 It owns as lessee the lease contract with said Indians, and as the lessor, owns lease contracts from a number of sublessees engaged in developing and producing oil and gas upon a portion of said leased lands. The company, by its sworn return to the State Board of Equalization for the year 1911, fixes the value of its property at \$53,835.10. For the same year, it returned property to local assessors of Osage and Washington counties, valued at \$52,832.50, at which amount the property returned to the local authorities by said company was assessed. All the property owned by the company is located in said Osage and Washington counties, and all its business operations are conducted in this state. The referee found the total value of all the property of the company, including its tangible and intangible property on the first day of February, 1911, to be \$500,000. From this amount, he deducted the amount of the property assessed locally and found that the value of the property which should be assessed by the State Board of Equalization for the year 1911 to be \$447,169.98.

The company, in making its return to the State Board of Equalization of its property listed only its physical properties, employed in the gas business. There is no controversy or contention about the value of the physical properties and the value of said properties has been assessed at \$53,835.10. In determining the value at which the company's property should be assessed, the referee took into consideration the value of the lease above mentioned held by the company on lands of the Osage Tribe of Indians, as heretofore mentioned. The contentions made by the company why the report of the referee should not be confirmed are: First. It is not a public service corpo-

ration, and therefore the State Board of Equalization was without authority to assess its property. Second. That its oil and gas leases are not property used in any public service rendered by it, and therefore are not subject to assessment by the State Board of Equalization. Third. That leases for prospecting and for the development and for producing oil and gas are not subject to taxes in the hands of the lessee or his assignees under the statute of this state; and, Fourth. That in exercising its rights under its lease from the Osage Tribe of Indians, approved by the Secretary of the Interior and by act of Congress in extending said lease, the company is a federal agency, or exercises a privilege or franchise granted by the Federal Government; and such lease, therefore, is not subject to taxation by the State.

We shall consider these contentions of appellant in their order. By section 34, article 9 of the Constitution, the term "public service corporation" is defined as follows:

"The term 'public service corporation' shall include all transportation and transmission companies, all gas, electric light, heat and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any right of way, street, alley, or public highway, whether along, over, or under the same, in a manner not permitted to the general public."

It is the contention of appellant that the foregoing definition of the term "public service corporation," although it specifically provides that all gas companies shall be deemed included by said term, it was not intended to include gas companies engaged in developing, manufacture or transportation of gas for the purpose of supplying only the persons or companies engaged in such production, manufacture or transportation. In other words, it was meant to include only those companies engaged in the manufacture, production or transportation of gas for use by the public. If we assume that this contention be correct, we are of the opinion that the finding of the referee that appellant is a public service corporation should not be set aside. The articles or charter of incorporation of appellant are not introduced in evidence; nor is there any other evidence to disclose just what are the charter powers of appellant; but there is evidence that it is engaged in rendering service to the general public in two different towns, in that it furnishes to the inhabitants of said towns generally gas for their consumption; and appellant, acting through its officers, has attempted to submit itself to the jurisdiction of the State Board of Equalization by making a return

327 as a public service corporation of a portion of its property to said board for assessment. In other words, the position of the company up to the time the State Board of Equalization raised the assessment of its property, was in the attitude of admitting that it is a public service corporation, because it voluntarily submitted a portion of its property to the Board for assessment as such a corporation. In Wyman on Public Service Corporations, sec. 243, it is said:

"That the business of supplying gas is public in character is now



universally recognized, provided that the company supplying is committed to supplying gas to the community in general."

It is true that it appears from the evidence that many of the lines of appellant company are temporarily laid, and that outside of certain towns, service is not rendered to the community in general, but only to sublessees of appellant company and to a few other persons along the lines of said company to whom service is rendered under private contract with the persons supplied; but in the towns mentioned, it appears that services rendered are to all members of the public seeking same. Under this state of the evidence, we are of the opinion that the finding of the referee that appellant company is a public service corporation should not be disturbed.

Section 21, article 10 of the Constitution, creates a State Board of Equalization, and provides which of the state officers shall constitute its members and defines the duties of said board. Among the duties prescribed are that "they shall assess all railroad and public service corporation property." It is contended that this provision does not authorize the State Board of Equalization to assess property of a public service corporation which such corporation does not use in rendering its public service. This contention, we do not think, can be sustained, either by the letter of the Constitution or by any implied meaning from the foregoing provision of section 21, article

10. The language of that provision is not that the State  
328 Board of Equalization shall assess all public service property,  
or all property engaged in a public service, but that it shall  
assess all public service corporation property. The meaning of this  
provision will not be changed, in our opinion, if it be paraphrased  
to read: "They shall assess all property of railroad and public  
service corporations." Had it been intended to limit the power and  
duty of the Board in assessing the property of public service corporations to assess only the property used in connection with the public service rendered by the company, then it would have been provided that said Board should assess all public service property. It may be urged that no reason exists why property of a public service corporation not used in connection with any public service rendered could not be assessed by the local authorities more satisfactorily than by the State Board of Equalization, and that it was intended to leave such power in the local authorities, or at least to leave it within the power of the Legislature to commit such authority to the local authorities; but such a dual system of assessment would often lead to complications that would almost, if not entirely, render the system impractical and afford easy opportunity for property to escape taxation. A telephone company, which by the Constitution is defined to be a public service corporation, may own a building, one story or one room of which is used by the company in rendering its service to the public; the remainder of the building is used for rental purposes and devoted entirely to private business. Under these circumstances, whose duty would it be to assess such property? In the instant case, wells have been drilled under the same lease, some of which produce oil, and others of which produce gas. The gas is used by the company in rendering its

public service; the oil is used in an entirely private business, and in no way in connection with the service rendered to the public. Assuming that these leases are subject to taxation, the value thereof is partly determined by the wells producing oil, and partly by the wells producing gas. Under the dual system of assessment, who would have power to assess these leases; the local authorities, or the State Board of Equalization? and what part of the value of the lease should be assessed by the local authorities, and what part by the State Board of Equalization? We think, when the framers of the Constitution said that all public service corporation property shall be assessed by the State Board, they meant to say more than that all public service property should be assessed by such Board; and they meant to avoid the very confusion which this case would present, if it had made it the duty of the State Board of Equalization to assess only the property of such corporation as is used in the public service, and left it to the local authorities to assess all other of its property.

The lease of appellant company from the United States government and the Osage Tribe of Indians does not convey any title to the oil and gas in situ under the leased premises to appellant company; it grants only the right or privilege to go upon said leased premises and prospect for oil and gas and reduce the same to possession and transport it from the premises for the consideration that appellant company shall pay to the Osage Indians as a royalty one-sixth of the oil produced upon the property covered by the lease. It is clear, under the decisions of this court, which are in harmony with the weight of judicial decisions, that such lease grants no right or title to the oil and gas in situ or any estate in the fee, but that such oil and gas, until reduced to possession, remains a part of the freehold, and the property of the owners of the freehold. *Duff et al. v. Keaton et al.*, 33 Okla. 92; *Frank Oil Co. v. Bellview Oil & Gas Co.*, et al., 29 Okl. 719; *Kolachny v. Galbreath*, 26 Okl. 772.

In the case first mentioned above, the court, speaking through Mr. Justice Williams, said:

330 "The rule seems to be settled in this jurisdiction that the grant of an exclusive privilege to go upon land for the purpose of exploring for oil or gas, the grantor to receive part of the oil or gas mined, does not vest in the grantee any estate in the land or oil or gas, but is merely a license or grant; such a lease creating an incorporeal hereditament only, and the lessee having no right or title to the oil or gas lying under the surface of the land. Thus, under our statute, is simply a chattel real."

Under this rule, it is clear that the oil and gas in situ may not be assessed as the property of the lessee; and it is not attempted in this proceeding to assess such against appellant company, but it is the contention of the state that the right or privilege to go upon the lands leased and produce oil and transport it is property that possesses great value, and is subject to be assessed for taxes. In opposition to this contention of the State, counsel for the appellant company, in exhaustive briefs, have cited a great number of decisions from other states; but they are without direct bearing upon the

question here involved, because most of them arose under statutes unlike the statutes in this state controlling the present case. Section 7541, Comp. Laws, 1909, provides:

"All property in this state, whether real or personal, including the property of corporations, banks, and bankers, except such as is exempt, shall be subject to taxation."

And section 7544 provides:

"Real property, for the purpose of taxation, shall be construed to mean the land itself and all buildings, structures and improvements or other fixtures of whatever kind thereon, and *all rights and privileges thereto belonging or in any wise appertaining and all mines, minerals, quarries and trees on or under the same.*" (Italics ours.)

It is under the italicized provision of the foregoing statute that the state contends leases granting to lessees the right to prospect for, drill, produce and transport oil and gas from leased premises are rendered subject to taxation as real property, for the reason that such leases convey rights and privileges appertaining to the land. In opposition thereto, the appellant company invokes the rule of statutory construction, that all tax acts must be construed strictly,

and if there is ambiguity in the language of the act, resulting in doubt whether the intent exists to levy a tax on a given thing or class of property, the doubt must be resolved in favor of the tax-payer. This rule is well recognized by the authorities: *American Net & Twine Co. v. Worthington*, 141 U. S. 468; *Rice v. United States*, 4 C. C. A. 104; *Crabtree et al. v. Madden*, 54 Fed. 427; *State v. Ashbrook*, 77 Am. St. 765 (Mo.); 26 Am. & Eng. Encyc. of Law, 2d ed. 669; *Cooley on Taxation*, 266.

We are doubtful, however, whether the rule should be applied to section 7544, if the language of such section alone was so ambiguous as to result in a doubt as to its meaning; for, by section 7541, supra, it is commanded that all property in the state, whether real or personal, except such as is exempted, shall be subject to taxation. Since there is no provision of the statute providing that such rights and privileges as are conveyed by oil and gas leases shall be assessed and taxed as personal property, unless section 7544 authorizes their assessment and the levy of taxes thereon as real property, the plain unmistakable intent and requirement of section 7541, that all property in the state shall be subject to taxation cannot be accomplished. Section 7544, therefore, should be construed in connection with the other provisions of the statute, and with a view of carrying out the purpose of the statute, made plain by its other provisions. But, to our minds, section 7544 possesses but little, if any, ambiguity, and conveys the meaning within its own terms that it is intended that every right and privilege appertaining to land shall be assessed as real property. That an oil and gas mining lease, authorizing the lessee or grantee to go upon the leased premises and to prospect thereon for oil and gas and reduce the same to the lessee's possession grants to the lessee a right and privilege appertaining to the land in the nature of an incorporeal hereditament, has been determined by this court: *Kolachny v. Galbreath*, supra; *Frank Oil Co.*

v. Bellview Oil & Gas Co., et al., supra; Duff et al. v. Keaton et al., supra.

332 It is true that until the gas or oil is discovered and reduced to possession by the lessee or grantee under the lease, it remains a part of the fee and the property of the lessor or the owner of the fee; but the ownership of said oil and gas after the lease is executed does not retain to the owner of the fee all the rights and privileges that he held before the execution of the lease; for, before the execution of the lease, the owner of the fee not only owned the oil and gas in situ, but the right to explore therefor and to reduce it to his possession; but, after the execution and delivery of a lease, he no longer, for the period of said lease, owns such right and privilege. Such right and privilege is vested by the lease in the lessee or grantee under the lease. This right and privilege, as is a matter of general knowledge, often exceeds in value many times the value of the land itself. It is also a fact of common knowledge that these rights and privileges constitute a large volume of the property upon the market of this state as a subject of barter, sale and transfer; that they constitute frequently the subject of litigation and demand and receive the protection of the judicial and executive departments of the government. To say that such rights and privileges are not property, would seem to require us to ignore the existence of every essential element of property.

In *Harvey Coal & Coke Co. v. Dillon et al.*, 59 W. Va. 605, 6 L. R. A. (N. S.) 628, the court had under consideration the taxation of a lease that granted to the lessee the right to enter upon the surface and use so much thereof as might be required in mining coal and making coke. The Constitution of West Virginia requires that all property, both personal and real, shall be taxed, and by a statute, chattels real are required to be taxed as personal property. In deciding that the lease involved in that case was property and subject to taxation, it was said:

333 "Anything capable of beneficial ownership is property,—in this instance a valuable right arising by contract, a right to take coal from the body of land, using the land for that purpose, and convert it into salable coal, a commodity of great commercial value. 'Man's rights in respect to things constitute property.' 2 Minor Inst. 1. 'The company's right to produce commercial, merchantable coal for market and manufacture coke is a right in respect to the land, and that mere right, under the contract, is property.'"

In *Graciosa Oil Co. v. Santa Barbara County*, 99 Pac. 483, the Supreme Court of California had under consideration the taxation of an oil and gas mining lease, the terms of which, in many respects, were similar to the terms of the lease under consideration in this case. The lease in that case, as in the instant case, did not convey any estate in the oil or gas in situ under the surface of the land covered by the lease, but conveyed the right to go upon the land and use the surface thereof in prospecting and mining for oil and gas. The statute of California, defining real estate for the purpose of taxation, is as follows:

"The term 'real estate' includes: (1) The possession of, claim to,

ownership of, or right to the possession of land. (2) All mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations, growing or being on the lands of the United States, and all rights and privileges appertaining thereto."

The court held that under both these definitions of real estate, the rights and privileges granted by an oil and gas lease constituted real estate, subject to taxation.

In *Texas Co. v. Daugherty et al.*, 160 S. W. 129, the court of Civil Appeals of Texas construed and applied to an oil and gas mining lease a statute of that state which defined real estate for the purpose of taxation as follows:

"Real property, for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all the buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same."

The court held that it is immaterial whether the lease under consideration conveyed any title to the lands or any title to the oil or gas beneath the surface until the same was severed from the land, for that in all events the lease did grant "rights and privileges belonging or \* \* \* appertaining" to the lands upon which the leases were given, and were therefore taxable under said statute as real estate.

The foregoing cases appear to us to be in point, and the decisions therein reached, sound. It will not do to say that because the lease leaves the title to the oil in the landowner until it is brought to the surface and no estate is vested in the lessee in the oil or gas until it is extracted and removed from the land that the lessee does not acquire any property by virtue of his lease, and that all the property rights pertaining to the land leased remain in the owner of the fee. After oil or gas is discovered, the combined values of the lease and of the land become frequently very great; but the royalty fixed by the lease executed before the discovery of the oil is ordinarily small, and no one would think of measuring the value of the property of the owner of the fee for the purpose of taxation, or for the purpose of sale at the combined value of the rights of the lessee and of the lessor. The value represented by the royalty and of the land, as before stated, is often small, compared to the value of the rights of the lessee. The statute not only commands that all property, except such as is specifically exempted from taxation shall be assessed and taxed each year, but commands, also, that it shall be assessed in the name of the owner thereof. Sec. 7547, Comp. Laws, 1909. If the mandate of this statute is to be observed, the right, privilege or interest appertaining to any land conveyed by an oil and gas mining lease must be assessed in the name of the owner of the lease.

Our conclusions upon the foregoing propositions bring us to appellant's fourth contention, which, to our minds, involves the most difficult question presented by this case.

It is admitted by all parties that the land covered by the original lease to Foster and assigned by him to appellant was within the

reservation of the Osage Tribe of Indians, and that the title thereto belonged to said Tribe of Indians at the time of the execution and assignment of said lease. It is also admitted that the 680,000 acres of land on which the lease was renewed by the act of March —, 1905, was at said time a part of the reservation owned by said tribe of Indians. Subsequently, on March 28, 1906, Congress passed an act known as the Osage Allotment Bill, which provided for the allotment of the lands of the Osage Tribe of Indians to the individual members of said tribe. 34 U. S. Stat. at L. p. 539. But section 3 of said act provides that the oil, gas, coal and other minerals covered by the lands for the selection, division and allotment of which provision is made in the act are reserved to the Osage Tribe of Indians for a period of twenty-five years from and after the 8th day of April, 1906, and leases for all oil, gas, and other minerals covered by the selection and division of the land provided for in the act may be made by the Osage Tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under rules and regulations as he may prescribe. The amount of royalty shall be determined by the President, and shall be paid into the treasury of the United States to the credit of the members of the Osage Tribe of Indians as other moneys of said tribe are to be deposited under the provision of said act, and said royalties shall be distributed to the individual members of the tribe according to the rules provided in the act at the time and in the manner provided for the payment of other moneys held in trust by the United States for said tribe. One of the provisions of said act is, that nothing therein contained shall be construed as affecting any valid existing lease or contract. Such provision was evidently enacted for the purpose of protecting the lease and renewal thereof here under consideration. By reason of this act, the gas, oil and other minerals under the lands remained the property of the said tribe, and the

336 plenary power of Congress over such property of the tribe, in view of the numerous decisions of the court upon the power of Congress over the property of the Indian Tribes, cannot be questioned. *Tiger v. Western Inv. Co.*, 221 U. S. 286; *Lone Wolf v. U. S.*, 187 U. S. 553; *Stephens v. Cherokee Nation*, 174 U. S. 445; *Choctaw Nation v. United States*, 119 U. S. 1; *Jefferson v. Winkler*, 26 Okl. 653.

Appellant's fourth contention, therefore, is that it is an agent of the federal government in the administration of said property, and that any attempt of the state to tax the value of its lease is void, for the reason that it is an attempt to tax a federal agency or to tax a privilege or franchise granted by the federal government. It is well settled that while the state may lay a tax upon the property of a federal agent, that it cannot levy a tax upon the operation of such agent; and that where a privilege or franchise has been granted by the United States, which it has constitutional power to grant, such franchise cannot be made the subject of state taxation: *Union P. Ry. Co. v. Peniston*, 18 Wall. 5, 21 L. Ed. 787; *Telegraph Co. v. Texas*, 105 U. S. 460, 26 L. Ed. 1067; *California v. Central Pac. Ry. Co.*, 127 U. S. 1.



Applying the foregoing legal principles, it has become well settled that a state may not burden interstate commerce by levying a tax thereon. Numerous cases supporting this rule may be found cited in *United States Express Co. v. Minnesota*, — U. S. —, 56 L. Ed. 459. The same section of the Constitution, to-wit: section 8, article 1, that confers upon Congress the power to regulate interstate commerce, also confers upon Congress power to regulate commerce with the Indian tribes; and unquestionably, a law of a state that attempts to levy a tax that would be a direct burden upon commerce with the Indian tribes or an interference therewith would be void. No general statement of the law applicable in all cases has ever been formulated by the courts in the various opinions rendered upon this question. In *Postal Telegraph Co. v. Adams*, 155 U. S. 688,

337 it was said:

"It is settled that where by way of duties laid on the transportation of the subjects of interstate commerce, or on the receipts derived therefrom, or on the occupation or business of carrying it on, a tax is levied by a state on interstate commerce, such taxation amounts to a regulation of such commerce and cannot be sustained. But property in a state belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a state, and may take the form of a tax for the privilege of exercising its franchises within the state, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the state, (the exaction, therefore, not being susceptible of exceeding the sum which might be leviable directly thereon,) and if payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes. The corporation is thus made to bear its proper proportion of the burdens of the government under whose protection it conducts its operations, while interstate commerce is not in itself subjected to restraint or impediment."

In *Thomas v. Gay*, 169 U. S. 264, the validity of a statute of the Territory of Oklahoma, assessing and levying a tax upon cattle belonging to a person not a resident of the Territory, but who graze and feed cattle upon the Osage Indian Reservation under a lease thereon for grazing purposes, was questioned. It was contended that the attempt of the territorial legislature to levy a tax upon such cattle was an interference with the congressional power to regulate commerce among the Indians. The court, in deciding against this contention, said:

"The unlimited power of Congress to deal with the Indians, their property and commercial transactions, so long as they keep up their tribal organizations, may be conceded; but it is not perceived that special taxation, by a state or territory, of property of others than Indians would be an interference with Congressional power. \* \* \* The taxes in question here were not imposed on the business of grazing, or on the rents received by the Indians, but on the cattle as property of the lessees, and, as we have heretofore said that as such a



tax is too remote and indirect to be deemed a tax or burthen on interstate commerce, so it is too remote and indirect to be regarded as an interference with the legislative power of Congress."

An ad valorem tax, levied upon the right or property of appellant acquired under its lease from the Osage Tribe of Indians or from Congress, is not a tax levied upon the land of the tribe; nor upon the oil and gas as a part of said land; nor is it levied upon any property of the Indians. If the statute undertook to levy a tax upon the royalties the Indian Tribe receives, then it might be suggested with reason that it constitutes a tax upon the property of the  
338 Indian tribe. Nor is it a tax imposed upon the business of prospecting for and developing oil and gas. The payment of the tax is not made a condition precedent to the right of appellant to carry on its business.

Our attention has been called to section 3, article 1 of the Constitution, which provides that:

"The people inhabiting the state do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. Land belonging to citizens of the United States residing without the limits of the state shall never be taxed at a higher rate than the land belonging to residents thereof. No taxes shall be imposed by the state on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use."

We are not impressed, however, that this provision of the Constitution has any bearing upon the question under consideration. No attempt is made to impose any tax upon the lands or other property of the Federal government, or upon the lands or property of the tribe.

In *Cozier et al. v. McMillan County*, 22 Mont. 484, it was held that the fact that an Indian post trader was licensed by the federal government to trade with the Indians upon an Indian reservation within the state of Montana did not exempt his stock and trade from county and state taxation; that such trader was a mere licensee, and not an agent of the government. The same rule is announced in *Noble et al. v. Amoretti*, 11 Wyo. 230.

In *U. P. R. R. Co. v. Peniston*, supra, it is said:

"It is, therefore, manifest that exemption of federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of the power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect."

We are not convinced that a tax upon the chattel real granted by the federal government to appellant, which pertains, it is true,

339 to real property belonging to the Indian tribe, is a tax upon commerce with the Indian tribe. It appears to us to be rather a tax upon property that has been acquired by the lessee by reason of its negotiation and business transaction with the federal government. The tax attempted to be levied upon appellant's property in this proceeding is the same ad valorem tax that is levied upon all the property of the state. By it appellant's property, which enjoys the protection of the departments of the state, is made to bear its just share of the burden of the state government, and no more. It is not a tax upon appellant's operations; nor is it imposed upon the franchise or right of appellant to exist and perform the function for which it was brought into being. In fact, its corporate franchise or rights as a corporation are not derived from the federal government, but from the state of New Jersey, under whose laws it was incorporated and organized.

In *Forbes v. Gracey*, 94 U. S. 762, was involved the validity of a statute of Nevada that taxed all the ores, tailings, mineral-bearing material of whatever character, after deducting the actual cost of extracting said ores from the mine and other expenses, such as transporting them to the place of reduction. In other words, the tax was levied upon the ores or minerals after they had been separated from their bed in the land, and was not upon the ore or mineral in situ. But the statute made such tax "a lien on the mines or mining claims from which the ores or minerals bearing gold or silver are extracted for reduction." The tax involved in that case was upon ores and minerals extracted from the public lands of the United States, and it was attempted to enforce the tax lien against a mining claim of the person who owned the mining claim from which the ores and minerals taxed were extracted, and the tax was resisted upon the ground that the title to the land from which the ores were taken was in the United States, and that the ores, for that reason, were not taxable, and that the lien could not be enforced against the mining claim. The court, in sustaining the lien and the tax, among other things, said:

340 "The use of the word 'mines or mining claims' is evidently intended to distinguish between the cases in which the miner is the owner of the soil, and therefore has perfect title to the mine, and those in which the miner does not have title to the soil, but works the mine under what is well known in the mining districts, and what is, as we have said, recognized by the act of Congress, as a mining claim. In the first case, the statute makes the tax a lien on the mine, because the title to the mine is in the person who owes and should pay the tax. In the other, the tax is a lien only on the claim of the miner; that is, on his possessory right to explore and work the mine under the existing laws and regulations on the subject."

We are therefore constrained to the view that the tax sought to be levied is not invalid because sought to be levied upon a federal agency or upon a franchise granted by the federal government; or because it interferes with the power of Congress to regulate commerce between the Indian tribes.

Our decision is that the report of the referee should be confirmed, and the judgment of this court is that the property of appellant be assessed as recommended by the referee in his report.

Upon the last proposition discussed, the writer of this opinion is not without doubt as to the correctness of the conclusion reached thereon; but since appellant has a remedy to correct any error that may be committed in this decision upon this question by an appeal to the Supreme Court of the United States, and there is doubt whether the state would have any relief, should the doubt we entertain be resolved erroneously against the state; and since no statute should be declared void as being in conflict with the Constitution, unless such conflict is clear, we are influenced to resolve the doubt existing in our minds as to its validity in favor of the contention of the state.

341 Kane and Loofbourrow, J. J., concur; Turner, J., concurs, except in last proposition discussed.

WILLIAMS, J.:

I dissent from that part of the opinion which holds that the State Board of Equalization has power to assess such property of the appellant as is not necessary to or reasonably incidental to the carrying on of its public service business. It is my opinion that all such property should be assessed by the local or county officer or board, and not the State Board. With this exception, I concur in the opinion.

342 & 343 Filed Mar. 2, 1914. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

Number 3240.

In re Assessment of the Indian Territory Illuminating Oil Company.

*Petition for Rehearing.*

Brennan, Kane & McCoy, Attorneys for Indian Territory Illuminating Oil Company.

344 In the Supreme Court of the State of Oklahoma.

Number 3240.

In re Assessment of the Indian Territory Illuminating Oil Company.

*Petition for Rehearing.*

Comes now the Indian Territory Illuminating Oil Company, the appellant in the above and foregoing proceeding, and  
345 moves the Honorable Supreme Court to grant it a rehearing of said cause on the following grounds:

## I.

The Court, in its opinion, overlooked the fact that *Harvey Coal and Coke Company v. Dillon*, 59 W. V. 605, 6 L. R. A. (N. S.) 628, 53 S. E. 928, cited in its opinion in the above and foregoing case, and which, in a large measure, is the basis of the opinion of the Court in this cause, is based on a statute of West Virginia, Acts of 1905, Chapter 35, page 285, which, in direct and express terms, declare chattel reals to be subjects of taxation, and that prior to such decision, and prior to the passage of such act, the Supreme Court of West Virginia had held such leases and the rights secured or evidenced thereby were not the subject of taxation as shown in *Carter v. Tyler County Court*, 45 W. V. 806, 32 S. E. 216, cited in the briefs in this cause, and also overlooked the case of *Barnes v. Been*, 138 Fed. 476, and *Rockwell v. Warren County*, 77 Atl. 695, and other cases cited in briefs in this cause, holding that oil and gas mining leases could not be subject to taxation unless expressly authorized and provided by law.

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## II.

The Court overlooked the fact that in *Graciosa Oil Company v. Santa Barbara County*, 99 Pac. 483, cited by the Court in its opinion to support the conclusion therein arrived at, such opinion, in addition to being a construction and based on Sec. 3617 of the Code of California, which section is cited by this Court as being substantially the same in effect as Sec. 7544 of the Compiled Laws of 1909 of Oklahoma, was mainly based upon other provisions of the laws of California, to-wit:

Sec. 3820 of the Code of that state, which, in express terms provides that taxes on all assessments of possession of, claim to, or right to, the possession of the land, shall be immediately due and payable upon assessment, and shall be collected by the assessor as provided in the chapter on taxation, and Sec. 3821 which declares that in the cases provided for in Sec. 3820, the assessor shall, at the time of making the assessment, or at any time before the first Monday of August following, collect taxes by seizure and sale of any personal property owned by the person against whom the tax

347 is assessed, and if no personal property can be found, then such assessor shall collect the taxes by seizure and sale of the possession of, claim to, or right to the possession of the land, and that by Sec. 3822 of the Code of California, the provisions of Sec. 3791 to 3796 of the Code of such state providing for the seizure and sale of property for taxation shall apply to the sale for taxes on assessments of possession of, claim to or right to, the possession of land, and that it was held by the Supreme Court of California in such case that the interests sought to be taxed or sold for taxes in the *Graciosa* case fell directly within the express terms of Sec. 3820 of the California Code. The Court also overlooked the fact that the case of *Graciosa Oil Company* itself holds that an oil and gas mining lease gives an interest or estate in land, and that, under the rule declared in Oklahoma by the opinion in this case, and in

Duff v. Keaton, Frank Oil Company v. Bellview Oil and Gas Company, and Kelachny v. Galbreath, an oil and gas mining lease has been expressly held not to give an interest in the oil or in and to the land described in such lease.

### III.

348 The Court overlooked the fact that the case of Texas Co. v. Daugherty, et al., 160 S. W. 129, cited by this Court in support of its opinion, was by an inferior court of the State of Texas, from which there was a dissent by Chief Justice Conner, who is perhaps the ablest judge on that Court and that such opinion was in direct conflict with the decision of the Supreme Court of Texas in the case of the State of Texas v. A. and N. W. R. R. Company, 94 Texas 530, 62 S. W. 1050, and Thompson v. Daugherty, 71 Tex. 192, construing the same statute construed by the Civil Court of Appeals in the Texas case, and that a writ of error had been granted by the Supreme Court of Texas for the purpose of reviewing the decision of the Civil Court of Appeals in the Texas case, and also overlooked the fact that in the case of the State v. Downman, 134 S. W., 787, the Court of Civil Appeals of Texas, of another district or division of that state, expressly upheld the taxing of all deeds to mineral rights on solid minerals on the express ground that said deeds amounted to a severance of the mineral estate from the estate in the surface, and expressly stated that the deeds conveyed an interest in land, and if they conveyed an interest in the

349 land, and not a mere privilege or incorporeal right, the interest conveyed was the subject of taxation, and that a writ of error in State v. Downman has been denied. The denial of the writ of error in the Downman case is, therefore, an express approval of the doctrine declared in that case, that where deeds or leases create a severance of the mineral estate, the interest given by such instruments is the subject of taxation, and the granting of a writ of error in the Texas Co. case is, at least, an indication that the Supreme Court of Texas is of the opinion that an oil and gas mining lease which does not give an interest in the land or in the oil thereunder, and is a mere chattel real or incorporeal hereditament, is not the subject of taxation.

### IV.

The Court overlooked the fact, in its opinion, that in the State of California, prior to the enactment of Sec. 3617, 3820, 3821, et sequens, cited in the Graciosa case, the Supreme Court of California, in De Witt v. Hayes, 2 Cal. 463, held that chattel reals and incorporeal rights were not the subject of taxation, although the constitution and laws of California provided that all property should be the subject of taxation.

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### V.

The Court, in its opinion, overlooked the fact that in oil and gas mining states, under statutes in effect declaring all property the

subject of taxation, such states had uniformly held that oil and gas mining leases were not the subject of taxation until after the passage of laws, in express terms, providing for the taxation of mining leases and rights or chattel reals, which cases have been cited in the briefs in this cause.

## VI.

The Court overlooked, in its opinion herein, the contention made in behalf of the Indian Territory Illuminating Oil Company that Sections 7574, 7575, 7586, 7589, 7591 and 7706 of the Compiled Laws of Oklahoma, 1909, provided for the rendition of taxes of property engaged in the oil and gas mining business, including improvements on leases of every kind and character, and the levying of a production tax on the amount of oil produced from such leases evinced and showed an intention on the part of the legislature to tax oil and gas mining interests in the manner prescribed in such statutes to the exclusion of any other.

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## VII.

The Court, in its opinion, overlooked and did not consider that Sec. 7544 of the Compiled Laws of Oklahoma, 1909, had been in force since the beginning of territorial existence, and had never been construed by the taxing officers of the various counties, or the State Board of Equalization, as taxing chattel reals, and that this contemporaneous construction of the statute by the officers charged with its construction and enforcement, should be binding on the court, and followed in this cause.

## VIII.

The Court overlooked, in its opinion, the fact that, in order for oil and gas mining leases to be taxed as real estate under Sec. 7544, such leases must, of necessity, create an interest in real estate, and amount to a severance of the mineral estate from the estate in the surface, and that this could not be so unless the Supreme Court is to overrule the doctrine on that subject declared in *Kelachny v. Galbreath* and other cases following that case.

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## IX.

The Court fails to sufficiently consider the question of the non-taxability of the particular oil and gas mining rights sought to be taxed in this case, on the ground of interference with a Federal Agency, overlooking the fact that the mineral rights in the Osage Nation are, for the present at least, vested in the tribe, and that the tribe as a department of the Federal Government, in the control and management of the Osage Indian tribe, would themselves have the right to enter on the lands of the tribe, and extract oil therefrom and that neither the mineral right considered separately from the land, or as a part of the land, would be subject to state taxation, nor could the right of the tribe as a tribe, to extract the oil from



under the land be subject to state taxation. If the tribal authorities themselves could extract such oil from under the land without being subject to state taxation for so doing, certainly it would have a right to give another the power to do for it that which it could do for itself.

## X.

353 The Court overlooked the fact, in its opinion, that an oil and gas mining lease on the lands of the Osage Tribe is in effect but a means or method by which the tribe extracts oil and gas by and with the service of another, which service is remunerated by giving such others a certain proportion of the oil and gas found, and retaining a certain portion in the tribe. In other words such a lease is a joint adventure, in which the lessee furnishes the capital with which to discover, develop and produce oil, which oil, if found, shall belong to such person in certain proportions, and to the Osage Tribe in certain proportions, and that a state tax thereon is, in effect, a tax on the right of the Indian Tribe to discover and produce oil and gas belonging to it from its tribal lands.

Wherefore, The Indian Territory Illuminating Oil Company prays that this Honorable Court will grant it a re-hearing in said cause, and give it sixty days from the filing of this petition in which to file briefs sustaining this petition.

## XI.

The Court overlooked or failed to consider the real and essential nature of an oil and gas mining lease in this: The Court considers the oil and gas mining lease as if a complete sale and transfer of the right of privilege of mining pertaining to the land, 354 when in truth and in fact it is but a joint venture entered into by the lessor and lessee whereby the lessor furnishes the land and the lessee the capital to exploit the land and operate on it, and each is to have the share of the product agreed upon. Under such contract the land owner is as much as ever the owner of the right and privilege. He merely shares with the lessee the profits of its use, if any, in consideration of the lessee furnishing the capital.

## XII.

The Court has overlooked the fact that when land is assessed to the owner at its true value in accordance with section 7544 that such assessment includes the value of all rights and privileges belonging or appertaining thereto, and that when the land owner is so assessed and he pays the taxes on his land the mandate of the law that all property in the state shall be assessed and taxes paid thereon is fully complied with, as was decided in the cases of *State v. A. & N. W. Railway Co.*, 94 Texas 530, and *Thompson v. Daugherty*, 71 Texas 192.



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## XIII.

The Court has overlooked the fact that section 7544 Compiled Laws 1909, was never designed or intended to segregate land into different estates or to point out specific items of property or separate estates in land as being subject to taxation, but was designed to declare and does declare what should be included in a rendition for taxes of real estate, that is, the different items that should be considered in arriving at the value to be fixed on the land as an entirety when such land was assessed, and the obvious construction and meaning of the section is, that when the owner of the land renders the same for taxation or it is assessed by the proper officer, all the different things mentioned in said section should be considered as going to make up the real estate and that each of these items shall be considered in placing a value on the land and the land as so valued assessed to the owner of the land. This is the rule declared in Texas under a statute which the court finds to be identical with section 7544, as shown by *State v. Railway*, 94 Texas 530.

## XIV.

356 The Court overlooked the fact that under the California Statute relied on as being substantially the same as section 7544 the bare or naked possession of land without any right thereto is to be deemed land for the purpose of taxation, and the method, time and manner of taxing and enforcing the taxes on such bare possession is prescribed by other sections of the California Code, and therefore this Court was in error in holding the *Gracioso Oil Company v. Santa Barbara Co.*, as an authority bearing out the construction placed by the Court on section 7544, or as an authority holding oil and gas mining leases taxable as an interest or state inland under section 7544.

Wherefore, the Indian Territory Illuminating Oil Co. prays this Honorable Court to grant it a rehearing in said cause and give it sixty days from the filing of this petition in which to file briefs in support hereof, and further prays the Court that owing to the importance of this case to the State, to the Osage Tribe of Indians, and to the great body of oil producers it will depart from its usual rule and permit this petition to be orally argued and set it down for such argument before it is decided whether the rehearing will be granted or denied.

BRENNAN, KANE & MCCOY,

*Attorneys for Indian Territory Illuminating Oil Company.*

357 And thereafter, to-wit, on March 24, 1914, there was made and entered the following order.

Supreme Court, January Term, 1914, March 24th, 1914, Twentieth Judicial Day.

#3240.

In re Assessment of Property Ind. Ter. Ill. Oil Co., etc.

And now on this day it is ordered by the Court that appellants be allowed 30 days in which to file brief, and Attorney General is allowed 3 days thereafter in which to file reply brief.

It is further ordered by the Court that C. B. Ames, be allowed to file briefs amicus curiae, in the above cause.

It is ordered by the Court that the above cause be set for oral argument on petition for rehearing on the first Tuesday after the briefs allowed to be filed herein are received by the Clerk of this Court.

Ind. Ter. Ill. Oil Co., In re Assessment.

3240.

And now on this 24th day of March, 1914, it is ordered by Hayes, C. J., that the mandate of this Court in the above cause be stayed pending disposition of petition for rehearing.

358 And thereafter, towit, on April 28, 1914, there was made and entered the following order.

Supreme Court, April Term, 1914, April 28th, 1914, Eighth Judicial Day.

#3240.

In re Assessment I. T. Ill. Oil Co., etc.

And now on this day the above cause is continued till April 29, 1914, and it is ordered by the Court that N. A. Gibson, and Geo. S. Ramsey, be allowed to file amicus curiae briefs at this time.

359 And thereafter, towit, on April 29, 1914, there was made and entered the following order.

Supreme Court, April Term, 1914, April 29th, 1914, Ninth Judicial Day.

#3240.

In re Assessment of I. T. Ill. Oil Co.

And now on this day the above cause is argued orally and the cause is submitted on the record, briefs, oral argument and petition for rehearing.

360 And thereafter, towit: on June 9, 1914, there was made and entered the following order.

Supreme Court, April Term 1914, June 9th, 1914, Sixteenth Judicial Day.

#3240.

In re Assessment of the Indian Territory Ill. Oil Co.

And now this cause comes on for final decision and determination by the court on rehearing.

And the court having considered the same finds that the report of the referee in the above cause should be confirmed.

It is therefore ordered and adjudged by the Court that the report of the referee in the above cause, be, and the same is hereby confirmed. Opinion by Kane, C. J.

All the Justices concur.

361 In the Supreme Court of the State of Oklahoma,

(Filed Jun- 9, 1914. W. H. L. Campbell, Clerk.)

No. 3240.

In re Assessment of The Indian Territory Illuminating Oil Company.

1. The power to tax is legislative and there must be distinct authority of law for every levy upon the people under that power.

2. Property itself is a creature of law and the discretion to select subjects of taxation rests solely with the legislature.

3. Where the legislature has omitted to provide for the assessment of certain kinds of property, it is not within the province or power of the court to make such assessments. No property can be assessed until the legislature has made proper provision for this purpose.

4. The legislature of this State has not selected oil and gas leases, as such, as subjects of taxation.

5. The legislature has not provided for a severance of the various interests which may be held in real property for purposes of taxation.

6. By virtue of sections 7304 and 7307, Rev. Laws, 1910, "real property," which, for the purpose of taxation, means "the land itself, and all buildings, structures and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, quarries and trees on or under the same," must be listed and assessed in the name of the owner of the land.

7. Oil and gas, while lying in the strata of earth from which they are produced, must be taxed as real property to the owner of the

land, if the land is taxable, under which for the time being they may lie.

8. Corporations incorporated under the laws of a sister state, doing business in this State, are taxable the same as domestic corporations.

9. A corporation for gain, incorporated under the laws of a sister state, doing business in this State, is not exempt from state taxation, either in its corporate person or its property, because the Federal Government finds it convenient or profitable to deal with it in carrying out its policy toward the Osage tribe of Indians.

10. It is a cardinal rule that whatever property is worth for the purposes of income and sale, it is also worth for the purpose of taxation.

11. Evidence examined and held, Sufficient to support the findings of the referee on the question of value.

(Syllabus by the Court.)

362 Appeal from the State Board of Equalization.

Hon. R. M. Campbell, Referee.

Affirmed.

Brennan, Kane & Michaelson and Hayes McCoy, for Petitioner.

Charles West, Attorney General and W. C. Reeves, Ass't Attorney General, for the State.

Preston C. West, Gilbert & Bond, Stuart, Cruce & Gilbert, Dillard & Blake, James B. Diggs, Henry McGraw, Amici Curiae.

*On Rehearing.*

Opinion of the Court by KANE, C. J.:

This is an appeal from the action of the State Board of Equalization in assessing the property of the Indian Territory Illuminating Oil Company for purposes of taxation. The return made by the company showed the valuation of its physical property for the purposes of taxation to be \$53,835.10. The State Board of Equalization found the value of its property for purposes of taxation to be \$538,350.00. In this Court, the cause was referred to a referee with directions to make findings of fact and conclusions of law. The referee found in effect that the Indian Territory Illuminating Oil Company is a corporation, organized under and by virtue of the laws of the State of New Jersey, with a capital stock of \$3,500,000.00; that on the 16th day of March, 1896, the Osage Nation of Indians in Oklahoma Territory, entered into a contract with ~~one~~ Edwin B. Foster, by the terms of which said Edwin B. Foster had a blanket lease upon the lands in Oklahoma Territory known as the Osage Indian Reservation, for the sole purpose of prospecting and

363 drilling wells and mining and producing petroleum and natural gas only. That this lease covered a period of ten years from its date and was approved by the Secretary of the Interior. That subsequent to the above date, said lease was extended, as to 680,000 acres of said Reservation, for a period of ten years from the date of its original expiration, and by the terms of said extension, said lease will expire on the 16th day of March, 1916; that prior to the extension of said lease the same had been assigned to the Indian Territory Illuminating Oil Company; that the Oil Company has sub-leased to something more than one hundred persons and corporations most of the lands covered by said lease contract, as extended on March 3rd, 1905, and oil operations on said lands have been and are being conducted largely by such sub-lessees; that a small portion of the tract, the amount of which does not appear from the evidence, is operated by the parent company direct; that said company has been, and is primarily engaged in the business of oil production in the territory covered by said lease with the Osage Indians, and has conducted its operations in the gas business as an incident to the development of the oil territory and the production of oil; and, to some extent, as a matter of accommodation to the citizens of Bigheart and Avant, and other persons residing along its pipe lines. That all the property owned by said company is located in Osage and Washington counties, Oklahoma, and all its business operations are conducted in said state. That the total valuation of said company's stock on the first day of February, 1911, was \$500,000.00.

After making several proper deductions from the above sum, the referee finds that the total valuation of the Indian Territory Illuminating Oil Company's property of every kind, located in Oklahoma, over and above the amount locally assessed, was \$447,169.98 on February 1st, 1911; and concludes that said company is liable for taxation by the State of Oklahoma for the full value of its property; and that it is not exempt from taxation upon the theory that it is a federal agent, or that it holds a franchise from the Federal Government.

364 The exceptions to the report of the referee filed by the Oil Company raise the following questions: (1) Was the evidence taken before the referee sufficient to sustain his finding that the appellant is a public service corporation; (2) Whether section 21, article 10, Williams' Constitution makes it the duty of the State Board of Equalization to assess all the property of public service corporations, including property not used in the public service, as well as that used in the public service; (3) Whether the evidence taken before the referee is sufficient to sustain his finding as to the value of appellant's taxable property; (4) Whether an oil and gas mining lease which grants to the lessee the right and privilege to go upon the lands of another for the purpose of exploring for oil and gas and to produce oil and gas and transport the same from the leased premises in consideration of the payment as royalty to the lessor of a part of the oil and gas discovered and a stipulated price for each well producing oil and gas, is taxable; (5) To what

extent is the appellant entitled to exemption from taxation on account of being a federal agency.

In a former opinion it was held:

"(1) Evidence examined and held sufficient to sustain the finding of the referee that appellant is a public service corporation.

"(2) Section 21, Article 10, Williams' Constitution makes it the duty of the State Board of Equalization to 'assess all railroad and public service corporation property.' By the foregoing provision of the Constitution, it is made the duty of the State Board of Equalization to assess all the property of any public service corporation, including property not used in the public service, as well as that used in the public service.

"(3) By reason of the foregoing statutes and section 7547, Comp. Laws, 1909, which requires all property to be assessed in the name of the owner thereof, an oil and gas mining lease should be assessed as the property of, and in the name of, the owner of such lease, and not as the property of and in the name of the lessor.

"(4) A statute of the state which authorized and directs the levy of an ad valorem tax upon an oil and gas mining lease from the Osage Tribe of Indians, approved by the Secretary of the Interior and extended by an act of Congress upon lands of such tribe of Indians is not void upon the ground that the lessee or his grantee is a federal agent, or, upon the ground that such tax is a direct burden upon or interferes with the power of Congress to regulate commerce with the Indians tribes."

365 As the petition for rehearing filed herein does not seriously question the soundness of the first two holdings, we will assume that they are correct, and will proceed to examine the remaining propositions.

It is well settled that the power to tax is legislative and there must be distinct authority of law for every levy upon the people under that power. 1 Cooley on Taxation 546. Recognizing the general nature of the power, the Constitution of the State ordains, (sec. 2, art. 10, Williams' Const.), that "The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated ordinary expenses of the state for each year." And section 8 of the same chapter provides that, "All property which may be taxed ad valorem shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale;" and section 14 provides that, "Taxes shall be levied and collected by general laws and for public purposes only."

From the foregoing constitutional provisions and others of similar import, it is obvious that it is left to the legislature of the state to determine all questions of state necessity, discretion or policy involved in ordering taxation and to decide when, how and for what public purpose taxes shall be levied and collected and to select the subjects of taxation. 1 Cooley on Taxation 546; Thomas v. Gay, 169 U. S. 264.

Therefore, it becomes necessary to inquire what provision our legislature has made toward vitalizing the constitutional mandate. Section 7302, Rev. L. 1910, provides that, "All property in this

state, whether real or personal, including the property of corporations, banks and bankers, except such as is exempt, shall be subject to taxation."

366 Property itself, being a creature of law, and the discretion to select subjects for taxation resting solely with the legislature, it may be expected of any law for the levying of taxes that it will specifically or otherwise enumerate the kinds of property to be taxed. This is essential since all property is never taxed and the assessor is without guide unless the statute supplies it. *Lott v. Ross & Co.*, 38 Ala. 156; *Moseley, etc. v. Tift*, 4 Fla. 402; *De Witt v. Hays*, 2 Cal. 463. In this State sections 7304 and 7305, Rev. Laws, 1910, supply this essential requirement. The first of these sections provides that, "Real property for the purpose of taxation shall be construed to mean the land itself, and all buildings, structures and improvements or other fixtures of what-soever kind thereon, and all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, quarries and trees on or under the same." And the second section provides that, "Personal property, for the purpose of taxation, shall be construed to include:

First. All goods, chattels moneys, credits and effects.

Second. All improvements made by others upon lands, the fee of which is still vested in the United States or this State; all improvements, including elevators and other structures, upon lands, the title to which is vested in any railway company or other corporation whose property is not subject to the same mode and rule of taxation as other property.

Third. The stock of nurserymen, growing or otherwise.

Fourth. The amount of money invested in bonds, stock or credits outside of the State of Oklahoma.

Fifth. All public stock and securities, and stocks or shares in any national or other bank or company incorporated under the laws of this or any other State, or of the United States, and situated and transacting business in this State.

Sixth. All shares in foreign corporations, owned by residents of this State.

Seventh. All horses and neat cattle, mules, asses, sheep, swine and goats.

Eighth. All household furniture, including gold and silver plate, musical instruments, watches and jewelry.

Ninth. Private libraries.

67 Tenth. All vehicles for transporting persons or passengers for pleasure or profit.

Eleventh. All wagons, vehicles or carriages and all improvements or machinery appertaining to agricultural labor.

Twelfth. All machinery and materials used by manufactories and all manufactured articles.

Thirteenth. Annuities, not including pensions from the United States or any state of the Union, until paid into the hands of the pensioner.

Fourteenth. All money, goods or property and capital employed in merchandizing.



Fifteenth. All agricultural implements or machinery, goods, wares, merchandise or other chattels, in this State, in possession of, or under the control of, or held for sale by any warehouseman, agent, factor or representative in any capacity of any manufacturer, or any dealer or agent of any such manufacturer.

Sixteenth. Personal property belonging to persons or companies doing freight or transportation business and belonging wholly or in part to persons within this State, for such part as is owned by said persons."

The significant features of the latter section for the purposes of this case are: The fifth subdivision thereof classifies stock or shares in any company incorporated under the laws of this or any other state as personal property for purposes of taxation; (2) Nowhere in this enumeration is a leasehold classified as personal property for purposes of taxation notwithstanding it is well settled that according to the general classification of property for other purposes a leasehold being a chattel real is personal property. Section 7319, Rev. Laws, 1910, which casts upon the State Board of Equalization the duty of providing "for the use of the assessors suitable notices and blank forms for the listing and assessment of all property and such instructions as shall be needful to secure full and uniform assessments and returns," provides that all taxable property shall be listed according to the classification therein prescribed which follows in effect the foregoing classification of property for purposes of taxation, and like it, also, this enumeration does not classify a leasehold as either real or personal property.

368 Section 7307, Rev. Laws, 1910, provides that "All taxable property, real or personal, shall be listed and assessed each year at its fair cash value, estimated at the price it would bring at a fair voluntary sale, in the name of the owner thereof on the first day of March of each year." And section 7338 provides that "every public service corporation organized, existing or doing business in this state shall on or before the last day of February of each year return sworn lists or schedules of its taxable property as hereinafter provided, or as may be required by the State Board of Equalization, and such property shall be listed with reference to the amount, kind and value on the first day of February of the year in which it is listed; and said property shall be subject to taxation for state, county, municipal, public school and other purposes, to the same extent as the real and personal property of private persons."

In the instant case we have a corporation for profit, incorporated under the laws of the State of New Jersey, transacting business in this State. There can be no doubt that foreign corporations doing business in another state are taxable in the latter state, the same as domestic corporations, if the terms of its statutes are such as to warrant it. *People v. McLean*, 80 N. Y. 254. There are no definite rules for arriving at the value of property for purposes of taxation unless the statute has prescribed them. Our statute contains a general direction that property must be assessed for taxation at its fair cash value estimated at the price it would bring at a fair voluntary sale; and the tribunal charged with the duty of estimating the value

of such property must do so according to its best judgment and with honest purpose. To state in detail the many particulars in the mass of circumstances laying the basis of a rational judgment touching the value of corporate property for purposes of taxation would serve no useful purpose. Generally, when the purpose of the law is to tax the corporation on the value of its property, this may be done

369 either by assessing the capital stock as being presumptively the actual measure of its property, or, by assessing the property specifically on an estimated value. *Commonwealth v. N. Y., P. & O. Ry. Co.*, 188 Pa. St. 139; *Railway Co. v. Bachus*, 154 U. S. 421; *Adams Exp. Co. v. Auditor*, 166 U. S. 185, 41 L. Ed. 977; *Henderson Bridge Co. v. Commonwealth*, 99 Ky. 623, 166 U. S. 150; *Oswego Starch Factory v. Dolloway*, 21 N. Y. 499; *State v. Jones*, 51 Ohio St. 492; *State v. Anderson*, 90 Wis. 550.

There is no serious conflict in the evidence taken before the referee, and the question of value of the property involved must therefore turn upon the deductions which reasonably may be drawn therefrom, in the light of the well established general rules governing such matters.

Briefly, the evidence shows that the company is capitalized at \$3,500,000.00; that whilst it was incorporated under the laws of the State of New Jersey, its business is confined entirely to the State of Oklahoma. The referee found that all the property owned by said company and used in the conduct of its business is located in Osage and Washington counties, Oklahoma, and all its business is conducted in said State. There is evidence to the effect that the business of the company pays one per cent on its entire capital stock. This evidence, of course, would not justify the referee in finding that the par value of the stock or shares of the company was presumptively the value of its property for the purpose of taxation. But when we consider that according to the report of the referee, less than one-seventh of its capital is invested in this State, and that the business done in the state pays one per cent or more on its entire capital stock, we are not prepared to say that the finding of the referee is not supported by sufficient evidence. Whilst the business of the company in Oklahoma may pay only one per cent on its entire capital stock, it pays more than seven per cent on the part thereof invested within this State, which is in our judgment a very fair return upon the investment. It is a cardinal rule which should never be forgotten that whatever property is worth for the purposes of income and sale, it is also worth for the purposes of taxation. *Adams Exp.*

*Co. v. Auditor*, *supra*.

370 The appellants complain that the referee unduly considered the oil and gas lease hereinbefore mentioned in reaching his conclusion as to the value of appellant's property. Whilst we are not convinced that this is so, we are satisfied that there is sufficient other evidence in the record to support the finding of the referee as to the value of the company's property.

The provisions of the Statute already adverted to provide a complete system for the levying of all taxes upon an ad valorem basis; and we can find no warrant in any of them for levying an ad valorem tax upon an oil and gas lease as such. Generally, an oil and gas

lease, a school land lease or a lease of any sort, for that matter, undoubtedly is property. But, as we have hereinbefore stated, property itself is a creature of the law and the classification thereof for purposes of taxation belongs exclusively to the legislative department. The legislature in classifying property for purposes of taxation is not required, and does not, always follow the common law classification of property for other purposes. It will frequently be found that the enumeration of property in statutes as real or personal for the purpose of taxation differs considerably from what it would be for other purposes in the same state. *Steere v. Walling*, 7 R. I. 317.

To determine that a certain article is property, according to the common law or general classification, is not to determine whether it is taxable; to be taxable it must be selected as a subject of taxation according to the legislative classification for that purpose. Therefore, the general rule is, no property can be assessed until the legislature has made proper provision for this purpose; and where the legislature has omitted to provide for the assessment of certain kinds of property, it is not within the province or power of the court to make such assessment. *Willis, Ex'r. v. Commonwealth*, 97 Va. 667; *In Re. Taxation Patented Min. Lands*, 9 Colo. 622; *People v. Feitner*, 167 N. Y. 1; *Wisconsin Ry. Co. v. Taylor Co.*, 52 Wis. 37; *Daugherty v. Thompson*, 71 Tex. 192; *Trammell v. Faught*, 12 S. W. 317; *De Witt v. Hays*, 2 Cal. 463, 56 Am. Dec. 352; 371 *Carter v. Tyler Co. Ct.*, 43 L. R. A. 725; *Williams v. Triche*, 107 La. Ann. 93, 31 So. 926. It is also observable that in many jurisdictions various interests in real property for purposes of taxation are made severable and assessable in the names of the owners of the respective interests. That, however, is not the case in this State. Under our system of taxation, real property which for purposes of taxation means the "land itself, all buildings, stocks, improvements, or other fixtures of whatsoever kind thereon and all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, quarries or trees under or on the same", must be assessed in the name of the owner of the land. This is in consonance with the general rule which seems to be that where the law does not provide for a severance for purposes of taxation and the lease is silent upon the subject, the obligation to pay taxes upon the leased premises devolves upon the lessor. *Freeman v. State*, 115 Ala. 208; *People v. Barker*, 153 N. Y. 111; *East Tennessee etc. R. Co. v. Morristown*, 35 S. W. 771. However, the lessee's assumption of the payment of taxes and assessments does not relieve the lessor from his liability nor does it enable the taxing authority to secure a personal judgment against the lessee. 1 *Desty on Taxation* 436; *Yazoo & M. V. R. Co. v. Adams*, 76 Miss. 545; *Miles v. Delaware & H. Canal Co.*, 140 Pa. St. 623; *C. R. I. & P. Ry. Co. v. Ottumwa*, 112 Ia. 300.

But the fact that the legislature has omitted to provide specifically for the assessment of any particular kind of property does not furnish ground for assuming that the legislature has illy followed the constitutional mandate that all property shall be taxed at its fair cash value. For example, article 14, chapter 72, Rev. Laws, 1910, provides for the taxation of railroads upon a gross revenue basis. Yet, it will not be contended that this system does not constitute a

tax upon the value of the property and franchises of the railroads situated within the state. The same may be said of the case at bar.

372 The law specifically provides for the taxation of the "stock or shares" of corporations as personal property upon an ad valorem basis, and it has been held that for the purpose of taxation, the word, "stock" in a statute authorizing taxation of the stock of corporations means not only stock subscriptions, but the actual tangible property of the corporation. *M. C. R. Co. v. Porter*, 17 Ind. 380; *State v. Branin*, 23 N. J. L. 484. And this is not all. In addition to the taxes levied upon an ad valorem basis, article 13, chapter 72, *supra*, provides for a gross revenue tax upon every person, firm, association or corporation, engaged in the mining or production in this state of petroleum or other mineral oil, or of natural gas, equal to one-half of one per cent of the gross receipt from the total production of petroleum or other mineral oil or natural gas.

We, therefore, conclude that oil and gas, while lying in the strata of Mother Earth, from which they are produced, constitute a sort of subterranean *fera naturæ* which, if taxed at all, prior to being reduced to possession must be taxed as real property to the owner of the land under which for the time being they may lie and cannot be taxed against one who has a mere lease or license to go upon the premises, search for and, if found, take them away. *Frank Oil Co. v. Belleview Gas & Oil Co.*, 29 Okla. 719; *Kolachny v. Galbreath* 26 Okla. 772; *Carter v. Tyler Co. Court (W. Va.)*, 32 S. E. 216; *Kansas Natural Gas Co. v. Bd. of Com'rs of Neosho Co. (Kan.)*, 89 Pac. 750; *Peterson v. Hall (W. Va.)*, 50 S. E. 603; *Barnes v. Bee*, 138 Fed. 476; *Hughes v. Vail*, 57 Vt. 41; *State v. South Penn Oil Co.*, 24 S. E. 638.

It seems to us that this is the most scientific method for imposing taxation upon this class of property. To undertake to tax an oil or gas lease is to undertake to impose a tax upon the illimitable vista of hope. Many instances are known where lessees have paid thousands of dollars bonus for a lease and have not discovered a drop of oil; and many other instances are known where the leases have cost comparatively nothing and oil has been found in enormous quantities. 373 Whether oil is under any particular tract of land is beyond the ken of man until a well has been drilled, and even then, no one can foresee how long the well will last or what its production will be. A great many people speculate in these oil and gas privileges; a few get rich, while others fail. Under the system of taxation devised by the legislature the wealth produced by the oil industry, the production of oil, the capital invested in its production, the oil on hand and the oil in place are taxed. We can find no justification in the law for any additional exactions.

Primarily this company is not a federal agency. It is a corporation for profit, incorporated under the laws of the state of New Jersey, and doing business in the State of Oklahoma, with whom the Federal Government finds it convenient or profitable to deal in carrying out its policy toward the Osage Tribe of Indians. What the state is attempting to do is to tax the property of this corpora-

tion within its borders. This certainly is a proper exercise of the taxing power of the state. In re Assessment W. U. Tel. Co., 35 Okla. 626. Borrowing the language of Mr. Justice Holmes, in Baltimore Shipbuilding Co. v. Baltimore, 195 U. S. 375, "It seems to us extravagant to say that an independent private corporation for gain, created by a state, is exempt from state taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time."

As the authorities sustaining this view of the case are collected in McAlester-Edwards Coal Co. v. Trapp, recently handed down, but not yet officially reported, it will be sufficient to refer to that case as controlling on this phase of the case at bar.

The report of the referee is therefore confirmed.

All the Justices concur.

374 In the Supreme Court of the State of Oklahoma.

No. 3240.

In re Assessment of Indian Territory Illuminating Oil Company.

*Petition for Rehearing.*

To the Honorable Supreme Court of the State of Oklahoma:

Now comes the State of Oklahoma, by the Attorney General, and moves and prays this Honorable Court to grant it a rehearing of this cause and to modify its opinion of June 9, 1914, as follows:

First. To reverse and modify said opinion so as to hold that oil and gas leases are liable to and may be assessed for all purposes of taxation in the names of and against the lessees as a right or privilege appertaining to the land and belonging to the lessees, and severed from the ownership of the fee.

Second. If this Honorable Court should hold that oil and gas leases are not taxable as such in the names of the lessees, except in the instances where such leases are owned by corporations and enter into and form a part of the estimate of the value of the capital stock, surplus and undivided profits of such corporations, the State asks that it be decided by this Court whether such leases for the purposes aforesaid shall be assessed in the counties, townships and school districts where the property covered by such leases is situated, or at the principal place of business of such corporations.

375 The State bases its claim for such reversal upon the contention that the Court erred in holding, as in paragraph 4 of its syllabus, that "the Legislature of this State has not selected oil and gas leases, as such, as subjects of taxation," and in paragraph 5 of said syllabus, in which the Court holds that "the Legislature has not provided for severance of the various interests which may be held in real property for purposes of taxation," and in paragraph 6 of said syllabus,

bus, holding "that all rights and privileges belonging to or in any-wise appertaining to said lands, and all mines, minerals, quarries and trees on or under the same, must be listed and assessed in the name of the "owner of the land."

The Court has overlooked the decision of the Supreme Court of the United States, in the case of the State of Texas vs. Downman, reported in the Advance Sheets U. S. Supreme Court, January 1, 1914, in which it was held that one man may own the fee in land and another may own the mineral right, and that the fee in land and mineral right are separately taxable, and has overlooked and disregarded the case of The Texas Company vs. Daugherty, et al., 160 S. W. 129, and the case of Graciosa Oil Company vs. Santa Barbara County, 99 Pac. 483, in which the courts of last resort in Texas and California have construed statutes of those states similar to the Oklahoma statute holding that gas leases similar to the one under consideration are taxable to the owners thereof, which cases were called to the attention of this Court in the briefs of counsel for the

376 State upon the original hearing and argument of this cause.

And the State asks that this petition be set down for hearing and oral argument allowed in addition to briefs in support of the same; that the same be set down at as early a date as the Court may give, for the reason that the final determination of the questions herein involved materially affects the revenues of the State at large, and particularly of the counties and local sub-divisions in which such leased lands are situate, as affecting the place where such property is taxable, if at all, and affecting the rates of taxes to be fixed by the Excise Board, which must be levied for meeting the purposes of state, county and local government.

CHAS. WEST,

*Attorney General;*

CHAS. L. MOORE,

*Assistant Attorney General,*

*Of Counsel for the State.*

STATE OF OKLAHOMA,

*Oklahoma County, ss:*

Mabel Fasken, of lawful age, being first duly sworn, deposes and says that she is an employee in the office of the Attorney General of the State of Oklahoma, that she served a copy of the within Petition for Re-hearing, on Brennan, Kane & Michaelson, Bartlesville, by mailing a full, true, correct and complete copy thereof to the address of Brennan, Kane & Michaelson, at Bartlesville, Oklahoma, on this the 15th day of June, A. D. 1914.

MABEL FASKEN.

Subscribed and sworn to before me on this the 15th day of June, 1914.

[SEAL.]

N. E. DE MOSS,

*Notary Public.*

My commission Expires Oct. 25, 1915.



Endorsed: No. 3240. In the Supreme Court of the State of Oklahoma. In re Assessment Indian Territory Illuminating Oil Company. Petition for re-hearing. Filed Jun- 15, 1914. W. H. L. Campbell, Clerk. Leave to file granted. 6/16/14. Kane, C. J. Chas. West, Attorney General. Chas. L. Moore, Ass't Att'y Gen.

377 Filed Jun- 19, 1914. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

#3240.

In re Assessment of Indian Territory Illuminating Oil Company.

Now comes Indian Territory Illuminating Oil Company and moves to be allowed to file with the clerk of said court its motion for a re-hearing in the above entitled cause, which said motion is hereto annexed and made a part of this motion.

BRENNAN, KANE & McCOY.

*Attorneys Indian Territory Illuminating Oil Company.*

Service of the Application and motion herein, are hereby acknowledged by the receipt of a copy of same, this June 19, 1914.

CHAS. L. MOORE,

*Ass't Att'y Gen.*

378 In the Supreme Court of the State of Oklahoma.

#3240.

In re Assessment of the Indian Territory Illuminating Oil Company.

*Petition for Rehearing.*

To the Honorable Supreme Court of Oklahoma:

Now comes the Indian Territory Illuminating Oil Company, by its attorneys, Brennan, Kane & McCoy, and prays this Honorable Court to grant it a re-hearing of this cause, and to modify its opinion of June 9, 1914, as follows:—

(1) To reverse and modify said opinion so as to hold that said company is not taxable on the value of its oil leases in the Osage Reservation, held under its lease from the Osage Tribe of Indians.

(2) To reverse and modify said opinion so as to absolve said company from the payment of taxes on its oil leases to the same extent as all individuals and lessees in Oklahoma are exempted by the said opinion of June 9, 1914, and to reverse the Conclusions of Law of the Honorable Referee herein.

(3) The court overlooked the fact that the Honorable Referee



379 found in his additional findings of fact that the total actual value of all the gas lines and similar property in its gas business was \$53,835.10, and that the gas business and oil business in the offices of said company are kept entirely separate, are easily accessible and easily ascertainable; and the court has overlooked the fact that the Referee actually found that the oil leases of the company were worth \$393,334.88 out of the total value of \$447,169.98; that there were only three species of property that was considered or ascertained in the whole evidence and that these three consist of (1) the gas pipeline business; (2) of the physical properties returned to the local assessor and (3) the balance was the receipts of the company from oil.

The Referee found that the receipts of the company from oil in 1910 were \$118,687.49. The Referee found that the gas business was conducted at a loss.

(4) This Honorable Court overlooked the fact that the only property that this company had was the so-called Foster Oil & Gas Lease on the Osage Reservation, from the Osage Tribe of Indians, and that it had no property in other states and conducts no other business whatsoever. That all its stock was invested in this state, in said reservation, under said lease. That the manner in which Three Million (3,000,000) shares of stock happened to be issued in the first place was fully disclosed in the evidence and not denied. (See page 101 of the printed record.)

This Honorable Court has overlooked the fact that it was plainly testified to that the estimate of \$500,000.00 embraced all the oil leases of the company, and that the two other species of property were particularly itemized.

(5) This Honorable Court erred when it decided in its opinion that the Referee found that the total value of the company's stock was \$500,000.00, because, in reality, the Referee included in his finding the total value of all the property of the company, tangible and intangible, and in his first conclusion of law found as follows:

"The Indian Territory Illuminating Oil Company is liable for taxation by the State of Oklahoma for the full value of its property, tangible and intangible,—that is, for the sum of \$500,000.00."

(6) That the first decision of this court in this case correctly recites such conclusions of the Referee as follows, viz.:

"The Referee found the total value of all the property of the company, including its tangible and intangible property, on the first day of February, 1911, to be \$500,000.00."

The word "stock" in the findings of fact is used inadvertently and specifically cleared up in the conclusions of law. The value of the stock of the company was only inquired into for the purpose of ascertaining the value of this oil company's properties, which were exactly the same as all oil companies' properties, viz: oil leases, physical properties, including derricks, etc., etc., and gas pipe lines. The physical properties were exactly determined by the Referee at \$52,332.50. The gas pipe lines were determined at \$53,835.10. The balance was the value of its oil leases. It was admitted that the

company had no other property of any kind or nature and operated in no other state and that its sole business was confined to performing the conditions as lessee under the Foster Oil & Gas Mining Lease in the Osage Reservation.

381 (7) There is no law of this state which permits the assessing of the value of the capital stock of a corporation to the corporation itself. The statute quoted by the court permitted the assessment of capital stock in corporations to the individuals owners thereof, and not to the corporation. If the value of the stock in a corporation, and the total income paid out thereon, may be considered for any purpose, it is only incidental to the ascertainment of the value of the properties owned by such corporation. The three specific properties in this case were clearly shown by the evidence, and it was a matter of no dispute before the Board of Equalization, before the Referee and on the first hearing in this case that nearly \$400,000.00 of said value embraced the value of the company's lease in the Osage Reservation aside from its physical properties and its gas properties. The evidence before the State Board of Equalization was made a part of the evidence before the Referee.

(8) This Honorable Court has overlooked the fact that on the hearing of this case we seriously questioned the correctness of the findings in the former opinion to the effect that this company was a public service corporation, and that it could be assessed by the State Board of Equalization.

(9) That the effect of the said decision of this court is to compel this company to pay on a valuation of its oil leases while the other oil companies of the state, and individuals particularly, are exempted therefrom, and that this company is particularly entitled to the protection of Section 1 of Article 14 of the Constitution of the

382 United States by denying to the Indian Territory Illuminating Oil Company, within its jurisdiction, the equal protection of the law.

(10) This company again reiterates that its business is of such a federal nature as to entitle it to protection from taxation on its lease from the Osage Tribe of Indians, under Section 8 of Article 1 of the Constitution of the United States, which grants to Congress alone the power to regulate commerce among the several states and with the Indian Tribes.

(11) That this Honorable Court has overlooked the evidence in this case that the income of this company is derived solely from the oil lease operated by this company and granted to it, as lessee, by the Osage Tribe of Indians and the Congress of the United States, and that the Referee actually sustained several requests for findings offered by this company, in which he found the valuation of the different properties and the income from the oil in such way as to clearly demonstrate this fact. (See additional findings of fact by the referee.)

(12) That there is no specific statute or law in Oklahoma that permits the taxation of income from oil leases, except the Gross Production tax, which is paid by the defendant company, and is not embraced in these proceedings, and that this company operates and

conducts its business exactly the same as any other oil company, and that careful lists of each kind of property were submitted, together with the exact source of the company's income, and that even  
 383 as to corporations doing business in Oklahoma, the effect of said decision would be to hold this company for the year in question and absolve all the rest engaged in identically the same business.

And the Indian Territory Illuminating Oil Company asks that this petition be set down for hearing and oral argument allowed in addition to briefs in support of the same; that the same be set down at as early a date as the court may give.

BRENNAN, KANE & MCCOY,

*Attorneys for Indian Territory Illuminating Oil Company.*

Pls. file, 6/19/14.

K., C. J.

384 Supreme Court, July Term, 1914, September 8th, 1914,  
 Fourteenth Judicial Day.

3240.

IN RE IND. TER. ILL. OIL CO.

And now on this day it is ordered by the Court that the petition for rehearing filed herein be, and the same is hereby overruled.

385 I, W. H. L. Campbell, Clerk of the Supreme Court of the State of Oklahoma, hereby certify that the foregoing pages numbered from 1 to 384 inclusive are a full, true and complete transcript of the record and all proceedings in said Supreme Court in the case entitled, In re Assessment of Property of Indian Territory Illuminating Oil Company, as the same remain on file and of record in this Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Oklahoma City, this 2d day of November, A. D. 1914.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL, *Clerk.*  
 By JESSIE PARDOE, *Deputy.*

Endorsed on cover: File No. 24,438. Oklahoma Supreme Court. Term No. 283. Indian Territory Illuminating Oil Company, plaintiff in error, vs. The State of Oklahoma. Filed November 13th, 1914. File No. 24,438.



IN THE

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1915.**

---

**No. 283.**

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**INDIAN TERRITORY ILLUMINATING OIL  
COMPANY, PLAINTIFF IN ERROR,**

**vs.**

**STATE OF OKLAHOMA.**

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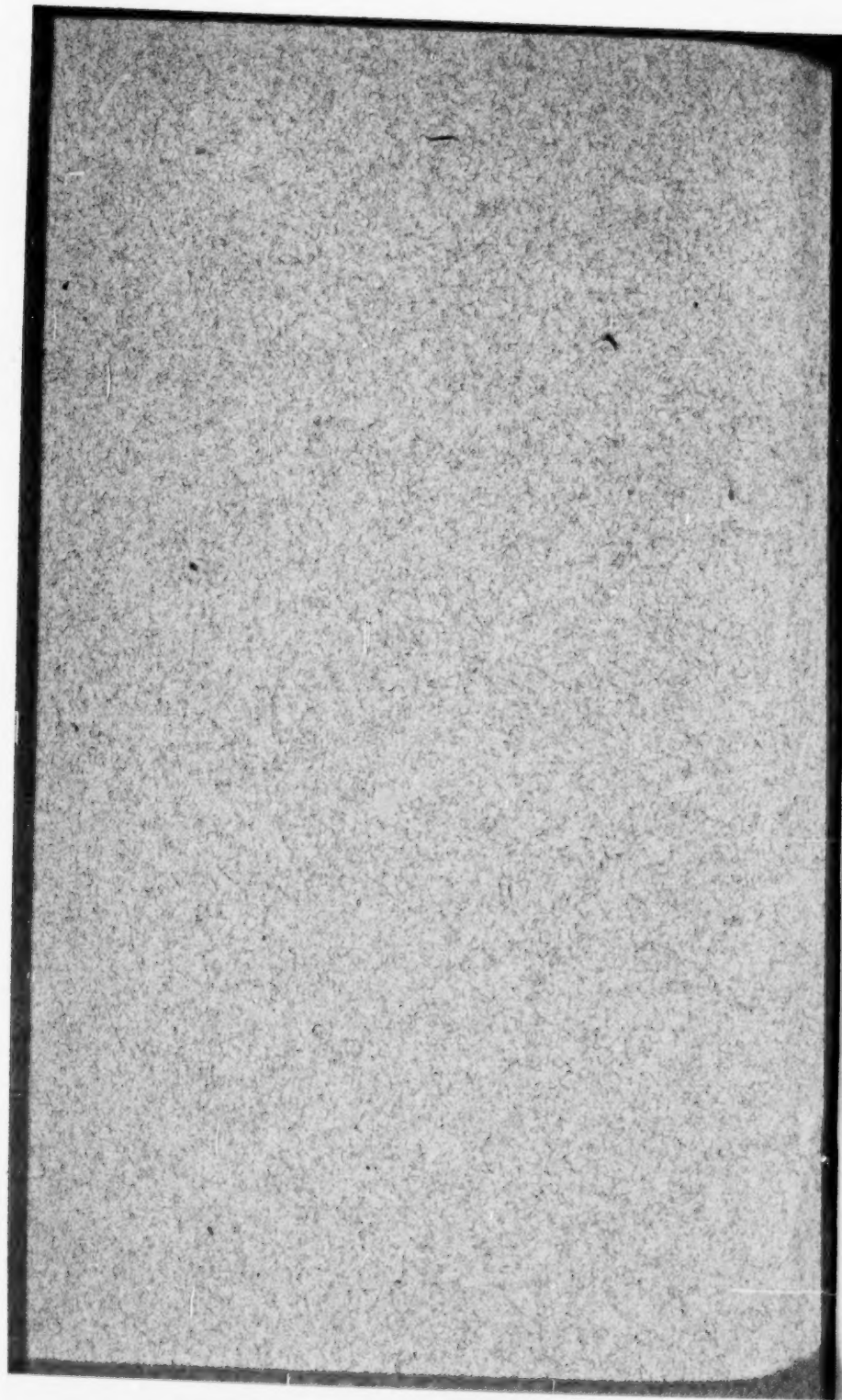
**IN ERROR TO THE SUPREME COURT OF THE STATE OF  
OKLAHOMA.**

---

**BRIEF FOR PLAINTIFF IN ERROR.**

---

**JOHN H. BRENNAN,  
PRESTON C. WEST,**  
*Attorneys for Plaintiff in Error.*



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# SUPREME COURT OF THE UNITED STATES

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---

IN ERROR TO THE SUPREME COURT OF THE STATE OF  
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---

**BRIEF FOR PLAINTIFF IN ERROR.**

---

## **Statement of Case.**

The writ of error in this case brings before this court for review the final judgment of the Supreme Court of the State of Oklahoma, wherein and whereby said State court affirmed the decision of its Referee herein, which in turn had affirmed the findings of the State Board of Equalization, assessing the Indian Territory Illuminating Oil Company on its stock, property, tangible and intangible, at \$500,000. There were two opinions: the original March 2, 1914 (Record, p. 211), and one on motion for rehearing,

June 9, 1914 (Record, p. 232). (See 142 Pac., 997.) The appeal from the determination of the State Board of Equalization to the Supreme Court of Oklahoma was under and by virtue of chapter 87, Laws of 1910 of that State, which permitted persons and corporations aggrieved by the action of said board to appeal to the Supreme Court of said State, where the cause must be tried *de novo*. The Oklahoma court referred the cause to a referee in the case to report findings of fact and his conclusions of law thereon.

The plaintiff in error claims that it was a Federal agent, acting under Federal appointment and authorization in the development of lands belonging to the Osage Tribe of Indians in the Osage Reservation, and that its business, license or permit as such cannot be taxed by the State government, although its physical properties are always subject to taxation. It contends that the United States Government had a definite duty in respect to opening and operating the oil mines upon the lands of the Osage tribe, and plaintiff in error is the instrumentality through which this obligation is being carried into effect. Plaintiff in error claims the protection of several clauses in the Federal Constitution, hereinafter referred to, and claims that the last decision of the State court in this case, if allowed to stand, would of itself raise the question as to whether plaintiff in error had not been therein denied the equal protection of the laws, as the judgment herein places the plaintiff in error in a category by itself as to the taxation of oil and gas lands, separate and distinct from any other similar company in Oklahoma.

There was some evidence taken before the State Board of Equalization (Record, pp. 17-69, inc.). After some voluminous procedure, petitions, notices of appeal, etc., as appears in the record regularly, there was additional evidence taken before the Referee, which may be found in the record from

pages 77 to 95, inclusive. Thereafter a bill of exceptions was settled and the evidence is repeated. Therefore it may be very pardonable in this brief to make a statement of the facts and various points in the record, so as to clarify the atmosphere, not only for the benefit of the court, but for the benefit of the Attorney General of Oklahoma, who has come into office since this record was made.

The lease holdings of the plaintiff in error were originally granted in 1896 to Edwin B. Foster and assigns, and covered the whole of the Osage Reservation, about 1,500,000 acres. The lease was to run ten years, and gave the grantee extensive privileges to prospect for, produce, and market both oil and gas. It was executed by virtue of act of Congress, February 28, 1891 (26 Stat., 794-5), which reads as follows:

*"Provided, That where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by the authority of the council speaking for such Indians, for a period not to exceed five years for grazing, or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior."*

The lease expressly ran to the grantee and his assignees and recognized the right in said grantee to sublease any portion thereof.

It further appears that the Indian Territory Illuminating Oil Company actually did sublease 680,000 acres out of the whole reservation prior to December 31, 1904, and that numerous firms, individuals, associations, and subcompanies were in actual possession, as such sublessees, in December 1904, and January, 1905, operating under the Parent Lease. The ten-year limitation on the original lease would expire in March, 1906; so that for the full protection of the extensive property involved, the Congress of the United

States itself, by act of March 3, 1905 (33 Stat., 1049, 1061), extended said lease to the extent only of such portion as had been subleased, viz., 680,000 acres, as follows:

"That any allotments which may be made of the Osage reservation, in Oklahoma Territory, shall be made subject to the terms and conditions of the lease herein authorized, the same being a renewal as to a part of the premises covered by a certain lease dated March 16, 1896, given by the Osage Nation of Indians to Edwin B. Foster, and approved by the Secretary of the Interior and now owned by the Indian Territory Illuminating Oil Company under assignments approved by the Secretary of the Interior, which said lease and all subleases thereof duly executed on or before December 31, 1904, or executed after that date based upon contracts made prior thereto, and which have been or shall be approved by the Secretary of the Interior, to the extent of 680,000 acres in the aggregate, are hereby extended for a period of ten years from the 16th day of March, 1906, with all the conditions of said original lease, except that from and after the 16th day of March, 1906, the royalty to be paid on gas shall be one hundred dollars per annum on each gas well, instead of fifty dollars as now provided in said lease, and except that the President of the United States shall determine the amount of royalty to be paid for oil. Said determination shall be evidenced by filing with the Secretary of the Interior on or before December 31, 1905, such determination; and the Secretary of the Interior shall immediately mail to the Indian Territory Illuminating Oil Company and each sublessee a copy thereof."

All the said subleases were separately approved, making a binding, separate contractual relation between each sublessee and the United States Government, acting for the Osage Indian tribe. All of the 680,000 acres is subleased except several thousand acres operated by the parent company itself. All are operating under the rules and regulations of the Department of the Interior (Record, pp. 47-53, inc.). No

sublease could be made or be valid without the approval of the Secretary of the Interior; all such approvals being, of course, pursuant to the departmental rules and regulations. And in this connection, the attention of the court is respectfully called to the recognition of this plaintiff in error as "*an intermediary*" even since this case reached this court, which matter is hereafter in this brief further referred to.

The subleases made by the plaintiff in error and referred to in the evidence are for oil only. The parent company reserves all the gas. This policy conserved the gas fuel in one company, and that company dealt the same out, at a nominal figure or price, to the oil sublessees, so as to induce development of wild-cat wells and untried acreage. The gas pipe lines were laid on the surface of the ground for the primary purpose of furnishing the producer of oil with fuel. The plaintiff in error had a reserved interest in each sublease of one-sixth royalty to itself, paying one-eighth to the tribe under the original lease and the act of renewal. Therefore such gas as was reserved from each sublease was furnished back to the producers at a loss to the parent company, as far as the gas business is concerned (Rec., pp. 23, 25, 26, 27, 35). The plaintiff in error was interested in all the leases to the extent of the gas reserved, the royalty to the tribe, and the general development to satisfy the conditions of the original lease.

In addition to all this the parent company may itself drill on subleased property and retain the well if gas (but, if oil, it belongs to the sublessee) (Record, p. 94).

So we find an intricate intertwinement of relation between the Indian Territory Illuminating Oil Company and its sublessees extending to the entire acreage. The Referee found that in prosecuting this business, in the development of the Osage Reservation, the plaintiff in error had lost in its gas operations, except as such gas business may have been profitable as an adjunct to the company's oil business (seventeenth finding, Record, p. 81).

The company received an oil royalty of about \$95,000

from such joint operations and about \$23,000 from leases operated by it—gross (Record, p. 103). Its expenses deducted, allowed the usual one per cent, or \$35,000, in dividends for the year from the whole property.

The original lease is found at pages 77 to 78, inclusive. It is in the usual form for prospecting and mining for oil and gas; the grantee to pay a royalty of one-tenth of all the crude petroleum mined or procured from said land as the same is delivered free in tanks at the wells or place where produced, and \$50 per annum for each gas well that may be discovered and utilized, said royalty to be based upon the market value of the products produced at the place of production and to be paid to the National Treasurer of the Osage Nation for the use and benefit of the Osage tribe of Indians. This royalty to the tribe was raised by the President to one-eighth under the delegated power in the act of March 3, 1905.

At the hearing before the State Board of Equalization, the plaintiff in error duly preserved all the questions with reference to its character as a Federal agency (Record, pp. 44, 45, 46). In the notice of appeal it again preserved all of said questions, and pointed out to the court its immunity from taxation of such character (Record, pp. 3-13, inc.). *The valuation of all physical properties was admitted and not denied.* The jurisdiction of the Board in the first instance and the Supreme Court thereafter to assess that portion of the property of the plaintiff in error known as oil and gas leases under the act of Congress referred to was the only question in the case. No testimony was introduced by the State. Before the Referee it was testified to and admitted *that the company had no other property than this very lease of the Osage Reservation* (Record, p. 87). Its capital stock was represented by this lease. The manner in which the \$3,500,000 of stock came to be issued was stated in full and admitted, viz., that certain promoters were responsible for that deal and that through litigation the property was taken back by the old owners

and that they took over the stock rather than an assignment of the property (Record, p. 90).

The only testimony as to the value of all the property of the corporation, which included only the Osage lease and its equipment, was given by witnesses for plaintiff in error. The testimony showed it to be worth \$500,000, but that this figure covered the whole property, including all the oil production and oil properties. It included the lease itself, stock in the company, and the good will and franchise of the company. It included the right to do business in the Osage Reservation, as it is being conducted now. In another form it would mean the transfer of the stock of the company with the governmental consent and acquiescence (Record, p. 91).

This was the evidence on which the Referee might base his finding of fact numbered fourteen, that "the total value of said company's stock, including all its property, tangible and intangible, on the first day of February, 1911, was \$500,000" (Record, p. 80). It is the basis of the Referee's conclusions of law as follows:

"The Indian Territory Illuminating Oil Company is liable for taxation by the State of Oklahoma, for the full value of its property, tangible and intangible—that is, for the sum of \$500,000.00" (Record, p. 81).

The findings of fact and conclusions of law by the Referee appointed by the Supreme Court of Oklahoma were confirmed (Record, p. 210). As the Referee's findings were amended by him prior to submission to the Supreme Court (Record, p. 104), and in order that this court may understand the issue, as well as for the benefit of counsel, who did not try this case in the court below, it would be proper here to emphasize said findings of fact and conclusions of law with the amendments. We quote from the Referee's report:



To the Honorable Supreme Court of the State of Oklahoma:

The cause above entitled is an appeal from the assessment made by the State Board of Equalization of the State of Oklahoma, of the taxable property of the Indian Territory Illuminating Oil Company, for the year 1911.

By order of the court duly entered I was appointed referee, and was directed as such to report my findings of fact and conclusions of law to the court. This appointment was made in January, 1912, and after taking the oath of office I heard the evidence offered by the Indian Territory Illuminating Oil Company, in the month of March, 1912, at which time said Indian Territory Illuminating Oil Company and the State of Oklahoma appeared before me by their respective attorneys. The time allowed by the original order in which the report of the Referee should have been filed has been extended by the court, and I now beg leave, in accordance with the order of appointment, to submit the following findings of fact and conclusions of law as arrived at by me after a consideration of the evidence and of the transcript of the proceedings had before the State Board of Equalization. Before said Board certain evidence was offered and certain statements were made and certain documents were filed by the Indian Territory Illuminating Oil Company, and these have all been considered by me, together with such additional documents, statements, and arguments of counsel as the respective parties to the litigation have seen fit to offer (Record, pp. 77-78).

*Findings of Fact.*

From the evidence I find the following facts:

1. The Indian Territory Illuminating Oil Company is a corporation organized under and by virtue of the laws of the State of New Jersey with a capital stock of \$3,500,000.00.
2. On the 16th day of March, 1896, the Osage Nation of Indians in Oklahoma Territory entered

into a contract with one Edwin B. Foster, by the terms of which said Edwin B. Foster had a blanket lease upon the lands in Oklahoma Territory, known as the Osage Indian Reservation, for the sole purpose of prospecting and drilling wells and mining and producing petroleum and natural gas only. This lease covered a period of ten years from its date and was approved by the Secretary of Interior. Under an act dated March 3, 1905, this lease was extended as to 680,000 acres of said reservation for a period of ten years from the date of its original expiration, and by the terms of said extension said lease will expire on the 16th day of March, 1916. Prior to the act of March 3, 1905, by which said lease was extended, the same had been acquired by and assigned to the Indian Territory Illuminating Oil Company.

3. The Indian Territory Illuminating Oil Company has subleased to something more than one hundred persons and corporations most of the lands covered by said lease contract as extended on March 3, 1905, and oil operations on said lands have been and are being conducted largely by such sublessees.

4. A small portion of the tract, the amount of which does not appear from the evidence, is operated by the parent company direct.

5. By the terms of the lease contract with the Osage tribe of Indians, as extended by act of March 3, 1905, the sublessees are required to pay a royalty of one-sixth of the oil produced upon the property covered by the lease, of which amount one twenty-fourth goes to the parent company and three twenty-fourths, or one-eighth, to the Osage Indians, the payments on behalf of the Indians being made to the United States Indian Agency for the Osages, at Pawhuska, Oklahoma, under and by virtue of certain rules and regulations governing the leasing of said lands, promulgated by the Department of the Interior.

6. The Indian Territory Illuminating Oil Company has laid pipe lines upon and across the land covered by said lease, for conveying natural gas, and during the period of its operations it has been the

practice of said company to furnish natural gas to the sublessees for use as fuel in their drilling and pumping operations at a flat rate, the amount of which is not disclosed by the evidence.

7. The Indian Territory Illuminating Oil Company, during the year 1911, and prior thereto, furnished natural gas for domestic consumption to the citizens and residents of the towns of Bigheart and Avant, two small towns located in the Osage Nation adjacent to the pipe lines of said Company. It was also, during said year and prior thereto, furnishing some gas to a local corporation in the city of Bartlesville, which held a franchise for and was engaged in the business of selling gas to the residents and citizens of that city, and the same was true at the town of Ochelata, where the local distributing company was furnished certain quantities of gas for use in its business in selling gas to the inhabitants of that place.

8. The Indian Territory Illuminating Oil Company had no local franchises at either Bigheart or Avant for the distribution of gas, and was not engaged in the distribution and sale of gas to the citizens and residents of the other places mentioned.

9. By the terms of its contract with the Osage Indians the Indian Territory Illuminating Oil Company was required to furnish gas free to the Osage citizens, and for use in the public institutions of the Osages, under certain conditions named.

10. Said Company has been and is primarily engaged in the business of oil production in the territory covered by said lease with the Osage Indians, and has conducted its operations in the gas business as an incident to the development of the oil territory and the production of oil, and to some extent, as a matter of accommodation, to the citizens of Bigheart and Avant, and other persons residing along its pipe lines.

11. Said Company made a sworn return to the State Board of Equalization for the year 1911, of \$53,835.10, as the actual fair cash value of that part of its property engaged in the public service, by reason of the gas business transacted by the company. This valuation was raised by the State Board of Equaliza-

tion to \$538,350, by action of the Board on the 30th day of August, 1911.

12. Said Company returned its property to the local assessors of Osage and Washington counties, for the year 1911, at \$52,830.02, at which the same was assessed.

13. All the property owned by said Company and used in the conduct of its business is located in Osage and Washington counties, Oklahoma, and all its business operations are conducted in said State.

14. The total value of said Company's stock, including all its property, tangible and intangible, on the first day of February, 1911, was \$500,000.

15. The amounts returned by said Company to the local assessors of Osage and Washington counties, and to the State Board of Equalization, do not include the lease, subleases, contracts and franchises of the Company, but only its physical properties, such as pipes, pipe lines and accessories, furniture, cash, accounts and bills receivable, it being contended by said Company that its lease, sublease, contracts and franchises are not subject to taxation by the State of Oklahoma.

16. The total value of the Indian Territory Illuminating Oil Company's property of every kind located in Oklahoma, over and above the amount locally assessed, was \$447,169.98, on February 1, 1911.

17. The gas business, as heretofore conducted by said Company, has not been, of itself, profitable, but it has been and is valuable as an adjunct to the Company's oil operations (Record, pp. 77, 78, 79, and 81, inc.).

#### *Additional Findings of Fact.*

\* \* \* \* \*

15. Considered as a business and going concern, the Bigheart plant was and is worth \$7,000, and the Avant plant was and is worth not more than \$2,500.

16. Said Company has no substantial, large pipe line that will accommodate any large quantity of gas for any great distance.

17. That the total actual value of all the gas pipe lines and similar physical property in said gas business is \$53,835.10.

18. The gas business and the oil business in the office of said Company is kept entirely separate, is easily accessible and easily ascertainable.

19. That the Company showed its receipts and disbursements from the sale of gas in such business separate from oil for several years prior to the time of the hearing before the Board and down to May 31, 1911.

28. That the Indian Territory Illuminating Oil Company received a royalty from oil alone from all its sublessees, being the one-twenty-fourth part, in 1910, to the value of \$98,802.22.

That it operated some oil leases directly itself for oil and received:

From lot # 32.....	21,362.13
From lot #293.....	1,916.34
From lot #275.....	606.80
	<hr/>
	23,885.27

So that its total income from oil alone for the year 1910 was.....	122,687.49
And the expense of such oil production was.....	36,593.19

30. That said Company has paid all taxes under the revenue law of the State of Oklahoma the same as other oil and gas companies, as is customary throughout the gas and oil country, and has returned its physical properties in the oil business to the local assessor and has paid its production tax from time to time.

32. That the said Indian Territory Illuminating Oil Company is now and has been at all times operating under said lease through said Act of Congress and under the Rules and Regulations of the Department of the Interior, introduced in evidence in this case, wherein and whereby said Department supervises the conduct of the business in the field with said Indian tribe and the said Department of the Interior has its inspectors and other officers in charge (Record, pp. 101-104).

The above request for special findings of fact pre-

sented to me this 10th day of October, 1912. Said findings numbered 15, 16, 17, 18, 19, 28, 30 and 32, respectively are allowed by me and made part of my report in said cause as findings of fact, and the State of Oklahoma is allowed an exception.

R. M. CAMPBELL, *Referee*.

(Record, pp. 101, 103, and 104.)

*Conclusions of Law.*

I beg leave to report the following conclusions of law in this case, based upon the findings of fact as above set forth.

1. The Indian Territory Illuminating Oil Company is liable for taxation by the State of Oklahoma, for the full value of its property, tangible and intangible—that is, for the sum of \$500,000.

2. I conclude that the Indian Territory Illuminating Oil Company is not exempt from taxation upon the theory that it is a Federal agent or that it holds a franchise from the Federal Government, but that the Act of Congress under which the contract with the Osage Indians was authorized and extended to the 16th day of March, 1916, was not entered into for the purpose of using said Indian Territory Illuminating Oil Company, as a Federal agent, or in the discharge of any governmental duty or function. In my opinion, the Act of Congress did not enlarge in any way, or in any way affect the powers of the Indian Territory Illuminating Oil Company, to make a contract. It was free to do that at any time, but this Act of Congress simply made the Osage tribe of Indians eligible to enter into a contract on their part. The purpose of the Government was to see to it that said tribe of Indians was fairly dealt with and properly treated. They were allowed, with the supervision, and subject to the approval, of the Government, to make the contract themselves. It was their contract, not the Government's.

3. Said Company in the transaction of its business in Oklahoma, is a public service corporation on account of the nature of the gas business transacted by it, and by submitting its report to the State Board

of Equalization as a public service corporation, and admitting to that Board its liability to be assessed for taxation, by said Board, is estopped to deny that it is engaged in the public service.

4. That part of the property of said Company is used in the production of oil and in the oil business, is not engaged in the public service, but the two kinds of business transacted by said Company, one dealing with oil and the other with gas, are so closely intermingled that it is impossible to say just what part of the total valuation of the Company should be assessed by the State Board of Equalization as engaged in the public service and what part should be assessed by the local assessors of the counties in which the property of the Company is located.

5. It is immaterial so far as the amount of taxes that must be paid is concerned, or the manner of the payment of the taxes, or the time in which said taxes must be paid, whether the assessment of said Company is made by the State Board of Equalization or by the County Boards of the counties in which its property is located.

6. Said County Boards of Assessors, upon the report of said Company having assessed its property in those counties connected with the oil business, at \$52,830.02, and that assessment having become final, it is fair and just that the remaining property of the Company should be assessed at the sum of \$147,169.98, said sum being the difference between the total valuation of the Company's property and the amount returned to the local assessors of Osage and Washington Counties.

I recommend that a judgment be entered fixing the assessment upon the Indian Territory Illuminating Oil Company's property, for taxation for the year 1911, at said sum of \$447,169.98.

\* \* \* \* \*

R. M. CAMPBELL, *Referee*.

(Record, pp. 81-82.)

Therefore, it appears from the findings of fact and conclusions of law, with amendments, so endorsed and confirmed by the Supreme Court of Oklahoma upon uncontroverted



evidence, that the total value of the property of the company was \$500,000, *which included all its property, tangible or intangible*; that the total value of its physical gas properties was \$53,835.10; that the total value of its physical properties involved in the oil business and returned to the local assessors was \$52,830.02; that the total valuation of all the physical properties of the plaintiff in error was \$106,665.12; that the company is primarily engaged in the business of oil production in the territory covered by said lease, and that all the property owned by said company and used in connection with its business is located in Osage and Washington counties, Oklahoma.

#### **Issues Before the Supreme Court of Oklahoma.**

The State Board of Equalization is empowered, under the constitution of Oklahoma, to assess public service corporations only, and it appears that the gas properties of the plaintiff in error had been, for some years prior to 1912, assessed by said Board as public service. At the hearing in this case it was finally determined by the Board to include all the oil properties of the company. It was strenuously contended that the company was not a public service corporation as to its oil properties in the Osage Reservation which comprised the greater part of its activities and business. This issue was again pressed in the Supreme Court, and determined against the plaintiff in error, with the dissenting opinion of Williams, J., on this particular question (Record, p. 224).

It was plainly apparent that the Referee had assessed all the oil and gas leases in the Osage Reservation, in addition to the physical properties of the plaintiff in error, and this proposition pending before the Supreme Court of Oklahoma excited the activity and interest of attorneys representing the large oil and gas interests in the State of Oklahoma, who contended that such leases were not taxable under the stat-

utes of the State of Oklahoma, entirely aside from the federal question involved with reference to the Indian Territory Illuminating Oil Company. Many counsel appeared, *amici curiæ*, in the case and filed briefs. In the first opinion of the Supreme Court of Oklahoma the court determined that all oil and gas leases in the State of Oklahoma were subject to taxation under the special statutes of said State. (See subdivisions 3, 4, and 5 of syllabus, Record, p. 211.) As to the particular contention of the plaintiff in error the court, in its first opinion, determined that the plaintiff in error, as to said lease in the Osage Reservation, was not a federal agent within the purview of the decisions on that subject (Record, pp. 220, 221, 222, 223, and 224).

The court said that the proposition "involved the most difficult question presented in the case," and it further said:

"We are therefore constrained to the view that the tax sought to be levied is not invalid because sought to be levied upon a federal agency or upon a franchise granted by the federal government; or because it interferes with the power of Congress to regulate commerce between the Indian tribes.

"Our decision is that the report of the referee should be confirmed, and the judgment of this court is that the property of appellant be assessed as recommended by the referee in his report.

"Upon the last proposition discussed, the writer of this opinion is not without doubt as to the correctness of the conclusion reached thereon; but since appellant has a remedy to correct any error that may be committed in this decision upon the question by an appeal to the Supreme Court of the United States, and there is doubt whether the State would have any relief should the doubt we entertain be resolved erroneously against the State; and since no statute should be declared void as being in conflict with the Constitution, unless such conflict is clear, we are influenced to resolve the doubt existing in our minds as to its validity in favor of the contention of the State" (Record, pp. 223, 224).

As the opinion of the Supreme Court involved the taxation of all the leases for oil and gas in the State of Oklahoma, in addition to the physical properties, it created some consternation, and motion for a rehearing was made and elaborate briefs filed (Record, pp. 225, 226, 227, 228, 229).

The Supreme Court of Oklahoma reviewed this former opinion, and after reversing all that part thereof in which it had been held that oil and gas leases were taxable, in substance held that the legislature had omitted to provide for the assessment of oil and gas leases; that it was not within the province or power of the court to make such assessment, and that the legislature had not selected oil and gas leases, as such, as subjects of taxation (Record, p. 231).

As to the plaintiff in error, whose leases had been clearly assessed in this case (or otherwise there would be no question of assessment of leases before the court), the court held that it was not exempt from State taxation, because the Federal Government found it convenient or profitable to deal with it in carrying out its policy toward the Osage tribe of Indians (Record, p. 232). *The reason why the honorable State court did not exempt the plaintiff in error from taxation of its leases, when it exempted all the other oil and gas leases in the State is not very clear, and therefore we quote that portion of the second opinion, as follows:*

"In the instant case we have a corporation for profit, incorporated under the laws of the State of New Jersey, transacting business in this State. There can be no doubt that foreign corporations doing business in another State are taxable in the latter State, the same as domestic corporations, if the terms of its statutes are such as to warrant it. *People vs. McLean*, 80 N. Y., 254. There are no definite rules for arriving at the value of property for purposes of taxation unless the statute has prescribed them. Our statute contains a general direction that property must be assessed for taxation at its fair cash value estimated at the price it would bring at a fair voluntary sale; and the tribunal charged with the

duty of estimating the value of such property must do so according to its best judgment and with honest purpose. To state in detail the many particulars in the mass of circumstances laying the basis of a rational judgment touching the value of corporate property for purposes of taxation would serve no useful purpose. Generally, when the purpose of the law is to tax the corporation on the value of its property, this may be done either by assessing the capital stock as being presumptively the actual measure of its property, or, by assessing the property specifically on an estimated value. *Commonwealth vs. N. Y., P. & O. Ry. Co.*, 188 Pa. St., 169; *Railway Co. vs. Bachus*, 154 U. S., 421; *Adams Exp. Co. vs. Auditor*, 166 U. S., 185; 41 L. Ed., 977; *Henderson Bridge Co. vs. Commonwealth*, 99 Ky., 623; 166 U. S., 150; *Oswego Starch Factory vs. Dolloway*, 21 N. Y., 499; *State vs. Jones*, 51 Ohio St., 492; *State vs. Anderson*, 90 Wis., 550.

"There is no serious conflict in the evidence taken before the referee, and the question of value of the property involved must therefore turn upon the deductions which reasonably may be drawn therefrom, in the light of the well-established general rules governing such matters.

"Briefly, the evidence shows that the company is capitalized at \$3,500,000.00; that whilst it was incorporated under the laws of the State of New Jersey, its business is confined entirely to the State of Oklahoma. The referee found that all the property owned by said company and used in the conduct of its business is located in Osage and Washington counties, Oklahoma, and all its business is conducted in said State. There is evidence to the effect that the business of the company pays one per cent on its entire capital stock. This evidence, of course, would not justify the referee in finding that the par value of the stock or shares of the company was presumptively the value of its property for the purpose of taxation. But when we consider that according to the report of the referee, less than one-seventh of its capital is invested in this State, and the business done in the State pays one per cent or more on its entire capital stock, we are not prepared

to say that the finding of the referee is not supported by sufficient evidence. Whilst the business of the company in Oklahoma may pay only one per cent on its entire capital stock, it pays more than seven per cent on the part thereof invested within this State, which is in our judgment a very fair return upon the investment. It is a cardinal rule which should never be forgotten that whatever property is worth for the purposes of income and sale, it is also worth for the purposes of taxation. *Adams Exp. Co. vs. Auditor, supra.*

"The appellants complain that the referee unduly considered the oil and gas lease hereinbefore mentioned in reaching his conclusion as to the value of appellant's property. Whilst we are not convinced that this is so, we are satisfied that there is sufficient other evidence in the record to support the finding of the referee as to the value of the company's property." \* \* \* (Record, pp. 236-238).

"Primarily this company is not a Federal agency. It is a corporation for profit, incorporated under the laws of the State of New Jersey, and doing business in the State of Oklahoma, with whom the Federal Government finds it convenient or profitable to deal in carrying out its policy toward the Osage tribe of Indians. What the State is attempting to do is to tax the property of this corporation within its borders. This certainly is a proper exercise of the taxing power of the State. *In re Assessment W. U. Tel. Co.*, 35 Okla., 626. Borrowing the language of Mr. Justice Holmes, in *Baltimore Shipbuilding Co. vs. Baltimore*, 195 U. S., 375, 'It seems to us extravagant to say that an independent private corporation for gain, created by a State, is exempt from State taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time.'

"As the authorities sustaining this view of the case are collected in *McAlester-Edwards Coal Co. vs. Trapp*, recently handed down, but not yet officially reported, it will be sufficient to refer to that case as controlling on this phase of the case at bar" (Record, pp. 239-240).

### ASSIGNMENT OF ERRORS.

First. The Supreme Court of the State of Oklahoma erred in holding and deciding in its first opinion that a statute of the State which authorizes and directs the levy of an *ad valorem* tax upon an oil and gas mining lease from the Osage tribe of Indians, approved by the Secretary of the Interior and extended by an act of Congress upon lands of such tribe of Indians, is not void upon the ground that the lessee or his grantee is a Federal agent or upon the ground that such tax is a direct burden upon or interference with the power of Congress to regulate commerce with the Indian tribes.

Second. The Supreme Court of the State of Oklahoma erred in holding and deciding that the Indian Territory Illuminating Oil Company was not a Federal agency as follows in its opinion:

"Primarily this company is not a Federal agency. It is a corporation for profit, incorporated under the laws of the State of New Jersey, and doing business in the State of Oklahoma, with whom the Federal Government finds it convenient or profitable to deal in carrying out its policy toward the Osage tribe of Indians. What the State is attempting to do is to tax property of this corporation within its borders. This certainly is a proper exercise of the taxing power of the State. Borrowing the language of Mr. Justice Holmes, in *Baltimore Shipbuilding Company vs. Baltimore*, 195 U. S., 375, 'it seems to us extravagant to say that an independent private corporation for gain, created by a State, is exempt from State taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time.'"

Third. The Supreme Court of the State of Oklahoma erred in holding and deciding that the action of the State board of assessors in assessing the lease, rights, and privileges granted to the Indian Territory Illuminating Oil Company by the Osage tribe of Indians, and renewed by act of Congress, was

not in violation of section 1 of article 14 of the Constitution of the United States as depriving it of its property without due process of law.

Fourth. The Supreme Court of the State of Oklahoma erred in holding and deciding that the said action of the State Board of Equalization of the State of Oklahoma did not deprive the Indian Territory Illuminating Oil Company of the equal protection of the law contrary to the provisions of section 1 of article 14 of the Constitution of the United States.

Fifth. The Supreme Court of Oklahoma erred in holding and deciding that the action of the State board of assessors in so assessing the said privileges, business, and license of the Indian Territory Illuminating Oil Company did not impose an illegal burden upon said Company, and upon commerce with an Indian tribe contrary to the provisions of section 8 of article 1 of the Constitution of the United States.

Sixth. The Supreme Court of the State of Oklahoma erred in holding and deciding that the Indian Territory Illuminating Oil Company was lawfully taxed by the State Board of Equalization, notwithstanding a similar tax could not be imposed upon all other like companies in Oklahoma, nor individuals, or upon their oil and gas lease holdings, and thereby, in the opinion itself, separate from any other consideration, depriving the Indian Territory Illuminating Oil Company of the equal protection of the law contrary to the provisions of section 1 of article 14 of the Constitution of the United States.

Seventh. That if, in any view of the opinion of the court, the said court upheld said assessment of the State Board of Equalization as being an assessment against the capital stock of said Indian Territory Illuminating Oil Company, then, and in that case, the said court erred in so holding and deciding, because there was no proof that said Company had any stock assessable, and capital stock is not assessable to other companies under the laws of the said State of Oklahoma, and that thereby the said State of Oklahoma denies to the Indian Territory Illuminating Oil Company the equal protection of the



laws contrary to the provisions of section 1 of article 14 of the Constitution of the United States, and that in any event said decision of said court is error, because said capital stock embraces the value of the very lease held not to be taxable by the Supreme Court in said decision.

Eighth. The Supreme Court of the State of Oklahoma erred in denying the motion of said Company for a rehearing and modification of the court's opinion of June 9, 1914, wherein and whereby the attention of said court was called to the fact, as a basis for the petition, that the said decision of said court in effect compelled this Company to pay on the valuation of its oil leases, while the other oil companies and individuals in particular were exempted therefrom, contrary to section 1 of article 14 of the Constitution of the United States, and thus, by the effect of said opinion, denied said Indian Territory Illuminating Oil Company the equal protection of the laws in the State of Oklahoma.

### ARGUMENT.

The whole assessment is void because of the inclusion therein of the business, franchises, grants, and leases belonging to plaintiff in error and granted by an act of Congress in a matter within its exclusive jurisdiction.

The first, second, and fifth assignments of error may be considered together, as they involve the authority of the State of Oklahoma, the State Board of Equalization, or the courts of said State to impose burdens in the way of taxation on the business, license, or duties of the plaintiff in error in and under the lease contract granted by act of Congress, March 3, 1905, and which act, in terms, extended the oil and gas mining lease of the plaintiff in error to the 16th day of March, 1916.

It appears (Record, pp. 4, 5, and 6) that the lease was granted in 1896 over the whole reservation, 1,500,000 acres; that the lands embraced were then unexplored, but that by 1905, sufficient development had been obtained to warrant an extension by Congress over 680,000 acres. It appears that natural gas was discovered by the company in the course of its explorations for oil, but that such gas was used as fuel by the parent company in securing drilling by itself and sublessees. Surface gas lines were laid and extended in every direction by the parent company in order to carry out the main objects and conditions of the lease. The gas operations were conducted for drilling and development purposes, and, as far as such business was itself concerned, as a separate entity, it was so carried on at a loss of \$50,000 in five years (Record, pp. 23, 24).

It appears that this gas property was considered by the State Board of Equalization as charged with a public service character, and, therefore, subject to assessment under the constitution of the State of Oklahoma, as a public service.

Prior to 1912 the oil properties and oil leases of the plaintiff in error were not involved in the assessment before the Board. Such oil properties and leases comprised 95 per cent of the total business of the Company at that time. The value of the physical properties, lines, etc., involved in the natural-gas business was testified to and returned at \$53,835.10, and the Referee so found by admitting and allowing the seven-teenth proposed finding of plaintiff in error (Record, p. 101). The total value of the physical properties involved in the oil business was admitted to be \$52,830.02, and so found by the Referee (Record, p. 80). There was no conflict in the testimony and no witnesses produced by the State. The value of \$500,000 placed upon all the property of the plaintiff in error was found by the Referee from the evidence of Mr. Brennan before the Board (Record, p. 27) and the evidence before the Referee (Record, p. 91), and it was particularly stated without dispute that it included the whole property, all the oil production and oil properties; it included the leases, stock in the company, and the good will and franchises of the company, and included the right to do business in the Osage Reservation, as it is now being conducted.

All the property of the Company is located in said Reservation, under said lease, with a short pipe line for gas running into Washington County. The Company had no property in any other State (Record, pp. 26 and 87). *The stock of the Company represented nothing but the property, viz., this lease of the Osage Reservation granted by the act of Congress.* No money was paid in for said stock. It conclusively appeared without dispute that as far back as 1902 this lease and property were in the hands of promoters, and that they formed the present company and issued said stock when litigation was commenced and the stock was all taken over by the old owners and held intact, in place of the property, and not put upon the market. This was fully described (Record, p. 90).

The Company itself was operating *three of four thousand acres* (Record, p. 85), and from these leases it received an income from the oil of about \$24,000 in 1910 gross. (See 26th proposed finding of fact allowed by Referee, Record, p. 103.) The Referee found that "the Indian Territory Illuminating Oil Company is now and has been at all times operating under said lease through said act of Congress, and under the rules and regulations of the Department of the Interior, introduced in evidence in this case, wherein and whereby said Department supervises the conduct of the business in the field with said Indian tribe, and the said Department of the Interior has its inspectors and other officers in charge" (Record, p. 104; see plaintiff's 32d proposed finding allowed by Referee).

The total valuation of all the physical properties of the company was \$106,665.12, *which left \$394,665.12 as the valuation of the franchise and leases of the plaintiff in error as found by the Referee and the Supreme Court and admitted by the witnesses.* That is to say, substantially four-fifths of the total valuation embraced the intangible assets of the plaintiff in error, and, as found by the Referee in his first conclusion of law, the Indian Territory Illuminating Oil Company is liable for taxation by the State of Oklahoma for the full value of its property, tangible and intangible, that is, upon the sum of \$500,000.

The lease as operated by the Company and its sublessees is a contractual relation by and between the said Company and its sublessees on the one hand and the Osage tribe of Indians and the United States Government on the other hand. It concerns tribal property wholly, and does not concern or affect the individual allotments or property of individual Indians. The sublessees referred to in the evidence were those who existed prior to December 31, 1905, and whose aggregate leases totaled 680,000 acres. The evidence did not refer to any subleases created by the parent company subsequent to the congressional act of March 3, 1905.

This act refers to 680,000 acres having been subleased, or contracted to be subleased, and said subleases were renewed by said act for a period of ten (10) years from March 16, 1906.

The act of March 3, 1905, which renewed said lease for ten years from March 16, 1906, did not refer the matter to the tribe or ask the consent of the tribe. The original act, under which the original lease was granted, provided that leases could only be made by the tribe for a period of ten years. The act of renewal gave a new lease for ten years more, arbitrarily, and without the consent of the Indians in the slightest degree, and arbitrarily changed some of the terms of said lease.

This is a stronger position than is involved in a lease by an allottee in the Five Civilized Tribes made subject to approval by the Secretary of the Interior. Yet even in such case it is held that in substance and effect it is the Secretary's lease. *Anicker v. Gunsberg*, 226 Fed., 179. Here the governmental act was primary and direct. The law did not permit the Osages, with the supervision of the Government, to make a contract for themselves, as is stated by the Referee. On the contrary, the Government made the contract itself by passing the act of Congress disposing of a subject within the exclusive jurisdiction of the Congress.

There is other congressional legislation on the subject. We introduced in evidence the Osage allotment bill, known as the act of June 28, 1906 (34 Stats., 539), which allots the land in the Osage Reservation to the Indians, with reservation of all the oil and gas and royalties thereon to the tribe (Record, p. 95). This act is instructive in showing that Congress has taken absolute possession of the mineral rights and the royalties produced under the lease in this case.

Subdivision 7 of section 2 provides as follows:

*"And provided further, That nothing herein shall authorize the sale of the oil, gas, coal, or other minerals covered by said lands, said minerals being reserved to the use of the tribe for a period of twenty-five years, and the royalty to be paid to said tribe as*

hereinafter provided: *And provided further*, That the oil, gas, coal, and other minerals upon said allotted lands shall become the property of the individual owners of said land at the expiration of said twenty-five years, unless otherwise provided for by act of Congress."

Section 3 of said allotment bill further provides as follows:

"That the oil, gas, coal, and other minerals covered by the lands for the selection and division of which provision is herein made are hereby reserved to the Osage tribe for a period of twenty-five years from and after the eighth day of April, nineteen hundred and six; and leases for all oil, gas, and other minerals, covered by selections and division of land herein provided for, may be made by the Osage tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under such rules and regulations as he may prescribe: *Provided*, That the royalties to be paid to the Osage tribe under any mineral lease so made shall be determined by the President of the United States: *And provided further*, That no mining or prospecting for any of said mineral or minerals shall be permitted on the homestead selections herein provided for without the written consent of the Secretary of the Interior; *Provided, however*, That nothing herein contained shall be construed as affecting any valid existing lease or contract."

It will appear from this provision that the Osage tribe of Indians have no power at all in the premises, because the leases are to be made "under such rules and regulations as the Secretary may prescribe." The royalties are to be determined by the President of the United States. Then the act proceeds to dispose of the royalties accruing under the lease to plaintiff in error. In the original lease the royalties were to be paid to the treasurer of the Osage tribe of Indians, but in this act the Government provided that the receipts and

royalties should be paid to the Treasurer of the United States, as follows:

"That the royalty received from oil, gas, coal, and other mineral leases upon the lands for which selection and division are herein provided, and all moneys received from the sale of town lots, together with the buildings thereon, and all moneys received from the sale of the three reservations of one hundred and sixty acres each heretofore reserved for dwelling purposes, and all moneys received from grazing lands, shall be placed in the Treasury of the United States to the credit of the members of the Osage tribe of Indians as other moneys of said tribe are to be deposited under the provisions of this act, and the same shall be distributed to the individual members of said Osage tribe according to the roll provided for herein, in the manner and at the same time that payments are made of interest on other moneys held in trust for the Osages by the United States, except as herein provided."

Thereupon Congress provides in the act for further disposition of royalties from oil and gas for the support of the schools and other purposes in subdivision 3 of section 4. Congress further diverts said funds in subdivision 4 of section 4 by providing for \$30,000 per annum received from oil and gas leases to be set aside for agency purposes.

When this act was passed the only lease in the Reservation was the lease to the Indian Territory Illuminating Oil Company, and the only royalties paid were paid by said Company. The only royalties now being paid are paid by said Company. The allotment bill, therefore, applies to the royalties accruing under this lease. It appears from said allotment bill that Congress has followed up and extended its authority expressed in the act of March 3, 1905 (33 Stats., 1049, 1061), by passing such enactments as it pleased with reference to any income derived by the Indian tribe under and by virtue of said original lease.

Therefore, by the two acts of March 3, 1905, and the allot-



ment bill, Congress expressed the exclusiveness of its authority to deal with this business of mining for oil and gas in the Osage Reservation. Plaintiff in error is an instrument or means by which Congress is continuing in the discharge of its duty as trustee and guardian for said tribe of Indians and their property.

We have already pointed out that since the inception of this litigation and since the record in this case was actually lodged in this court, the Osages themselves and the authorized representative of the Government have reaffirmed the fact that the plaintiff in error was an instrumentality of the Government in handling the oil situation in the Osage Nation. In June, 1915, the tribal council of the Osage Nation came to Washington and (the Secretary of the Interior then having under consideration the matter of leasing their lands after the blanket lease should by its own terms cease to be operative) passed a set of resolutions which were approved by the Secretary, and which contained, *inter alia*, the following:

"Whereas the so-called Foster lease now owned by the Indian Territory Illuminating Oil Company and its sublessees, covering 680,000 acres in the Osage reservation, Oklahoma, will expire on the 16th day of March, 1916:

"Now, therefore, be it resolved by the Osage Tribal Council now in session at Washington, D. C., this 17th day of June, 1915, that the following recommendations be, and are hereby, made to the Secretary of the Interior in connection with the leasing of said lands:

\* \* \* \* \*

"3. The Indian Territory Illuminating Oil Company shall be eliminated as an intermediary."

This being after the fact would not, of course, be effective to fix authoritatively the status which plaintiff in error had occupied under its lease and the previous acts of Congress, but it clearly reflects the understanding of all parties that

for nearly twenty years this Company had acted as an "intermediary," and that it was recognized as being an agency or instrumentality theretofore employed by the Federal Government in handling the property and affairs of the tribe.

The plenary power of Congress over all the lands and property of the Osage Indian tribe will be admitted. Congress has unquestionably the power to administer the property of Indians, and Congress possesses a paramount power over their property by reason of the exercise of guardianship over their interests. Such authority may be implied, even though opposed to the strict letter of a treaty with the Indians.

*Lone Wolf v. Hitchcock*, 197 U. S., 553.

*Choctaw Nation v. United States*, 119 U. S., 1.

*Stevens v. Cherokee Nation*, 174 U. S., 445.

*United States v. Aaron*, 183 Fed., 347.

*United States v. Allen* (C. C. A.), 179 Fed., 13.

*Tiger v. Western Investment Company*, 221 U. S., 286.

*Anicker v. Gunsburg*, 226 Fed., 176.

In *U. S. v. Aaron, supra*, the Federal court had before it for the first time this very Osage allotment bill, and the court held that notwithstanding the origin of the title of the Osage tribe of Indians and its fee simple character, the ownership of the Osage Reservation was in the tribe, and not in individual members; and that it was competent for Congress to provide for its allotment to individual members and to impose such conditions and restrictions as it deemed proper.

In the case of *United States v. Board of County Commissioners*, 193 Fed., 485, Judge Cottrell again considered the general rules applicable to the proper construction of this same allotment bill. This was another Government suit to restrain State taxation. The court then had before it the decision in the *Allen* case, 179 Fed., 13, and expressly followed it. In construing the Osage allotment bill the court said:

"If the language of an act is doubtful, the circumstances attending its adoption are proper aids to construction."

The court alluded to the reservation of all the oil and gas and mineral rights, and took judicial notice of the lease to the plaintiff in error herein, its scope and effect. While deciding and holding that there was a manifest intent on the part of Congress to permit the taxation of certain interests of allottees in portions of the allotted lands, it was careful to add the following:

"By this holding, however, is not meant that the interest in the minerals reserved to the tribe is subject to taxation. Every sale of this interest is declared unauthorized, and it must be immaterial whether accomplished by the voluntary act of the allottee or by the involuntary process of taxation. The reservation of this interest for the use of the tribe is an instrumentality, not only employed by the United States in carrying out a Government policy, but expressly reserved from sale for the period of 25 years."

The foregoing language is substantially the same as used by this court in dealing with the coal-mining situation in the Choctaw Nation (235 U. S., 298).

It would indeed hardly be possible to enlarge upon the language of the Supreme Court of Oklahoma in recognition of the exclusive control and jurisdiction of Congress over the subject.

*Gleason et al. v. Wood*, 28 Okla., 502.

*Jefferson v. Winkler*, 26 Okla., 653.

By the terms of the enabling act for the admission of Oklahoma to statehood and of section 3 of the constitution of the State of Oklahoma it is provided:

"SEC. 3. The people inhabiting the State do agree and declare that they forever disclaim all right and

title in and to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States."

(34 Stat., 270.)

Coming now to the consideration and proper construction of the original lease and the contract with the sublessees within the 680,000 acres, it appears at a glance that they come squarely within the rule laid down by the Supreme Court of the State of Oklahoma as to what property rights are granted thereby.

"Oil and gas while in the earth, unlike solid minerals, are not the subject of ownership distinct from the soil, and the grant of the oil and gas therein, is a grant, not of the oil that is in the ground, but of such a part as the grantee may find, and passes nothing except the right to explore for the same under the terms of such contract."

*Frank Oil Company v. Bellevue Co.*, 119 Pac., 260.

*Kolachny v. Galbraith*, 110 Pac., 902.

In the latter case the court said:

"Such leases are simply grants of a right to prospect for oil and gas, no title vesting until such substances are reduced to possession by extracting the same from the earth—an incorporeal hereditament."

But in any event this right, license or privilege possessed by the Indian Territory Illuminating Oil Company and its said sublessees to enter upon tribal property and drill for oil

cannot be taxed. If any part of the property of said lessees is taxable, it would only be its physical properties, its pipe lines, casing, derricks, etc., employed in the oil and gas business. The company, being a Federal agent under said lease and transacting business between the Government and the Osage tribe of Indians, is charged with the burden of a high Federal policy or business. Such business, license, privilege or franchise is not the subject of State taxation.

*California v. Central Pac. R. R. Co.*, 127 U. S., 1; 32 L. Ed., 150.

*Union Pac. R. R. Co. v. Peniston*, 18 Wall., 5; 21 L. Ed., 787.

*Western U. Tel. Co. v. Texas*, 105 U. S., 460; 26 L. Ed., 1067.

*Farmers' Bank v. Minnesota*, 232 U. S., 516 (decided Feb. 24, 1914).

*Choctaw, etc., R. R. Co. v. Harrison*, 235 U. S., 292 (decided Nov. 30, 1914).

*M., K. & T. R. R. Co. v. Meyer*, 204 Fed., 140.

*McAlester, etc., Coal Co. v. Trapp*, 43 Okla., 510; 141 Pac., 794.

*Thomas v. Gay*, 169 U. S., 264.

In *California v. Central Pac. R. R. Co.*, *supra*, this court held that the State Board of Equalization of California acted without authority in including in their assessment franchises conferred by the United States for constructing a railroad from the Pacific Ocean across the State as well as across the territory of the United States; that the assessment of these franchises was repugnant to the Constitution and laws of the United States and the power given to Congress to regulate commerce among the several States. Franchises conferred by Congress cannot, without its permission, be taxed by the States. The court found that the assessment made by the State Board of Equalization on the value of the company's stock included the full value of all franchises and cor-

porate powers held and exercised by the defendant. In *Farmers' Bank v. Minnesota*, *supra*, the State sought to impose a tax on bonds issued by municipalities in the Indian Territory and Oklahoma Territory. This court held that said Territories were instrumentalities and agencies of the Federal Government established by Congress for the government of the people within their borders, with authority to subdelegate the governmental power to the several municipal corporations therein; that the bonds issued by these municipalities were not subject to State taxation, no matter where held, and that the issuing of municipal bonds by the cities in these two Territories *was the performance of a governmental function within the established doctrine*. The court said:

"But we deem it entirely clear that a tax upon the exercise of the function of issuing municipal bonds is a tax upon the operations of the Government, and not in any sense a tax upon the property of the municipality. And to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them."

The court quotes and approves the following argument of Mr. Chief Justice Marshall in *McCulloch v. Maryland*:

"The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of the Government. It may be carried to an extent which shall arrest them entirely."

The tax sought to be collected by the State of Minnesota on the municipal bonds of cities of the Indian Territory and the Territory of Oklahoma was assessed after the State of Oklahoma was admitted into the Union, and the argument was made that Indian Territory and Oklahoma Territory

had ceased to exist as Federal agencies. The court said there was nothing in this argument and made the following very pertinent comment, to wit:

"Presumably the municipal credit was enhanced and the terms of the municipal borrowing rendered more favorable, by the understanding that the bonds, being obligations of an agency of the Federal Government, would be exempt from taxation by the several States. The value of the bonds in the market was presumably thereby increased. Indeed, the State court in the present case very plainly declares (114 Minnesota, 109) that bonds of the municipalities of the territories, if not taxable by the State, command a higher price on the market than bonds of the municipalities of the States. To deprive bonds of the former description of their immunity from State taxation, and this because of the subsequent action of Congress in erecting the territories into a State, with or without an assumption by the new State of the obligations of the former Federal agency, would be in effect to impair the obligation of the contract; and this is so inconsistent with the honor and dignity of the United States that such an intent should not be presumed without the clearest legislative language requiring it."

The reasons why Government bonds are exempt from State taxation are the same reasons precisely why this lease contract is exempt from State taxation. The application is too clear for dispute, and it is unnecessary to prolong the argument. When this lease was made, in 1896, it was non-taxable, and when renewed for ten (10) years, in 1906, it was non-taxable. If the present lease can be taxed by the State, a renewal of this lease can be taxed also. Likewise, if the United States, upon the expiration of this lease, should lease to another person or corporation, the new lease will be subject to State taxation if the old lease is subject to State taxation. Yet it must be admitted that the United States can negotiate a more favorable lease for the Osages



if it is non-taxable. As said by Mr. Chief Justice Marshall in *Weston v. City Council of Charleston* (2 Pet., 449, 468):

"The right to tax the contract (*the lease contract*) to any extent, when made, must operate upon the power to borrow (*the power to make the lease and negotiate an advantageous contract for the Osages*) before it is exercised, and have a sensible influence on the contract (*on the lease*). The extent of this influence depends on the will of a distinct government. \* \* \* It may be carried to an extent which shall arrest them entirely."

[The words in italics are interpolated by us.]

In *Choctaw, etc., R. R. Company v. Harrison, supra*, this court had under consideration the gross-revenue tax imposed by the State of Oklahoma upon coal miners or producers equal to a specified percentage of the gross receipts from the total coal produced. It was held that such act was an occupation or privilege tax which cannot be exacted from a Federal instrumentality, acting under congressional authority, such as the corporate lessee, under the authority of the Curtis act of June 28, 1898, of coal mines upon segregated and unallotted lands belonging to the Choctaw and Chickasaw Indian tribes. This case is directly in point. Among other things, the court said:

"Neither State courts nor legislatures, by giving a tax a particular name, or by the use of some form of words, can take away our duty to consider its real nature and effect."

That the Supreme Court of Oklahoma has never regarded legislation of this character in its true light, nor apprehended the full import of constitutional restrictions upon and inhibitions against State interference with Federal control over Federal business, can plainly be seen from a reading of the decision of said court in the case of *McAlester-Edwards Coal Co. v. Trapp* (141 Pac., 794). This court having, however, in the *Harrison* case, *supra*, referred

to the holding of the State court and to the opposite conclusion reached by the Federal court for the Western District, and repudiated the former, further discussion is unnecessary if, indeed, it would not be impertinent.

There is a more recent and interesting controversy over the subject, which is the outgrowth of the legislation passed in March, 1915, by the Oklahoma legislature. This act provides for a gross-production tax on oil and gas leases in the State of Oklahoma in lieu of all other forms of taxation. The Supreme Court, having decided that oil and gas leases were not taxable in the case of the Indian Territory Illuminating Oil Company, the subject of reaching this species of property by the State legislature has been a very interesting one. In this last act it is provided that whenever such mining operation "is so carried on and conducted through a Federal agency that the State has no authority to impose and collect therefrom a gross-production tax, that as to all such persons, etc., shall be taxed on an *ad valorem* basis and not subject to the gross-production tax provided to be levied in this act."

This act is before the Supreme Court of the State of Oklahoma at present in the case of "*In re Gross-Production Tax of the Wolverine Oil Company*" (not published), decided October 12, 1915. There is a motion for a rehearing pending at the time of writing this brief. With reference to leases in the Osage Reservation, the court in this opinion said:

"In the leasing of the lands of the Osage Nation, for oil and gas, as well as in the making of such leases on the restricted lands of certain of the allottees of the Five Civilized Tribes, the Department of the Interior, acting pursuant to lawful warrant, has in behalf of these Indians, whom Congress has regarded as dependent and in need of the Government's aid and protection, assumed full and complete jurisdiction and control during the period of dependency. This form of general guardianship is

exercised because of the duty owing these dependent people that these vast oil and gas deposits underneath their lands may be developed and marketed, and those lawfully entitled thereto given the benefit thereof. As was said in the Harrison case, the instrumentalities made use of by the General Government are the lessees of such land, or their duly authorized assignees. More need not be said in this connection for the question is foreclosed by the opinion in the Harrison case. The limitation upon the State's power in this regard is expressly recognized by the act itself, and by counsel who say that the State cannot levy an occupation or privilege tax upon a Federal instrumentality acting under congressional authority."

## **PART SECOND OF ARGUMENT.**

### **Some Comments on the Last Decision of the State Court in Connection with the Federal Agency Question Discussed in Part One.**

The facts and issues in this case before the Supreme Court of Oklahoma warranted the court in holding that the leases of the plaintiff in error had been comprised in the assessment of \$500,000, so that the question of the power of the State to tax property of that character was before it. The court held oil and gas leases not taxable under the statutes of the State of Oklahoma, separate and apart from the land.

There was no conflict in the testimony before the Referee—there was no suggestion of any—there was not even cross-examination. The full value of the physical properties of the plaintiff in error, as a going concern, was admitted, \$106,665.12. Its operation of four thousand acres for oil production and value thereof were admitted. It was twice testified that the value of all said leases, governmental grants, licenses, etc., including its physical properties, was

\$500,000. The lease has but a short period of time to run. All this Company's property, tangible and intangible, is in this Osage lease. All its stock investment is in this lease and in Oklahoma. It has no investment of capital stock or property in any other State.

The Referee looked at the matter squarely, and held that the franchises, grants, licenses, leases, and intangible property of the plaintiff in error in the Osage Reservation were not immune on the ground of Federal agency. His report fully covers the ground and put the question squarely up to the Supreme Court of the State of Oklahoma.

In its first decision said court fully met all questions as presented by the evidence and the Referee's report. It found oil and gas leases taxable, separate from the physical properties of the producers in Oklahoma, because such rights and privileges as are usually conveyed in oil and gas leases granting permission to go upon the lands of the lessors and prospect for oil were taxed against the plaintiff in error in this case. The intangible right was confessedly sought to be reached by the State Board and the Referee. The question was in the case. The decision would not be *obiter*.

Likewise as to the question of Federal agency, the court dealt with that controversy at length.

But in the second opinion, there was a change of language, but not of result to plaintiff in error. The court reversed itself as to the power of the State to value and assess for taxation oil and gas leases, because the question was fairly in the case before the court, the leases of the plaintiff in error having been valued and assessed by the State Board and the Referee. Therefore the last decision on this point was not *obiter dictum*.

Yet the Supreme Court of the State of Oklahoma allowed the judgment and decision to stand against the plaintiff in error in this case when all its leases, rights, charter, and intangible property had been assessed, and relieved all the other oil companies in Oklahoma from a similar burden.

This company is thereby subjected to an excessive assessment of nearly \$400,000, covered by its lease and intangible rights of property.

In thus holding the plaintiff in error under the judgment in this case, and relieving all the other companies, the court indulged in some language which, with all due respect, we have found difficult to understand. Nor do we believe it will be at once wholly clear to this court. For instance, while admitting that all the property and business of the Company is in the State of Oklahoma under said lease, evidence is quoted to show that it has paid 1 per cent on its entire capital stock from its said business, and it is said that although less than one-seventh of its capital stock is invested in the State, the business in the State pays 1 per cent or more on its entire capital stock. The court also declared that it was not prepared to say that the findings of the Referee were not supported by sufficient evidence.

There is no question about the findings of the Referee or the evidence, and the Referee's valuation of \$500,000 on the entire business needs no analysis. It was unnecessary for the court to find a key to a mystery created by itself. The court appeared to desire to open another door, but upon opening the same it is found that we are in the identical room we first occupied.

In the State of Oklahoma the capital stock of a corporation which has been invested in tangible property, real and personal, is not subject to taxation separate and distinct from the property. If the company owns any of its own stock, it may be assessable. But proceedings to tax the corporation itself upon its outstanding stock are not permitted by the laws of the State.

*Weatherford Milling Co. v. Duncan*, 140 Pac., 1184.

Of course the court did not intend to do this, nor did it question the value of the physical properties of the Company

as admitted in the record and returned by the Referee at \$106,665.12. The findings of the Referee were confirmed.

A key may be found to the intentions of the court by the fact that in the first opinion the State court said that the Referee found the total value of all the property of the Company, including its tangible and intangible property, on the first day of February, 1911, to be \$500,000 (Record, p. 213). In the second opinion, when the court comes to that point in the statement of facts, it used the following language in stating the findings of the Referee: "That the total valuation of said company's *stock* on the first day of February, 1911, was \$500,000." Of course the Referee did not find any such value in the *stock* alone, but taking this as a cue we may readily ascertain the drifting of the court below. This becomes all the more clear when we follow up the reasoning of the court.

The court said that the manner of assessing corporate property, as a general proposition, was to take the value of the capital stock as being presumptively the actual measure of its property or by assessing the property specifically on estimated value. It is very plain to be seen that the difficulty in arriving at the intention of the court below is dependent upon the use of the word "*property*" by the court. The court believed that the income of the plaintiff in error, as indicated by dividends, revealed a species of *property* that was subject to taxation and not within the Federal rule against State taxation of a Federal agency. That is to say, the court attempted to draw a distinction between physical properties of the Company, valued, as the same should be, considering the corporation as a going concern, and the intangible assets of the Company known as oil and gas leases, but that over and above these two property rights there was another that could be reached by taxation, *which would be the income, production, dividends, revenues, and profits coming from all the properties after the same had been severed.*

This appears clearly when we read subdivision No. 9 of the

opinion, where the court deals with the Federal agency question, and concludes as follows:

"As the authorities sustaining this view of the case are collected in *McAlester-Edwards Coal Co. v. Trapp*, 141 Pac., 794, recently handed down, but not yet officially reported, it will be sufficient to refer to that case as controlling on this phase of the case at bar."

The case cited by the court, in which it defined property rights that could be taxed under the decision of the Supreme Court of the United States, and yet not violate the rule we are discussing, was, however, completely overturned by this court in *Choctaw, etc., R. R. Co. v. Harrison*, 235 U. S., 292.

We will not discuss the reasoning in the *Trapp* case save to say that it is the sole basis for the conclusions of the State court in the case at bar.

If the court intended to assess the stock of the company at its full value of \$500,000, such valuation would comprise all the leases and privileges belonging to it as well as the good will and business, thus bringing the case squarely within the condemnation of this court.

*California v. Central Pac. R. R. Co.*, 127 U. S., 1.

As by its second opinion the court had held the Indian Territory Illuminating Oil Company to the judgment and affirmed the finding of the Referee in a case where oil and gas leases were plainly involved in any valuation which could be placed upon its property in excess of \$106,665.12, and at the same time had relieved oil and gas leases as such from direct taxation, the Attorney General of Oklahoma immediately moved the court, in a motion for a rehearing, to the effect that the court give the State some further idea or instructions as to what was meant in its decision, so that the Attorney General might proceed against other corporations in like situation with the Indian Territory Illuminating Oil Company. Therefore the Attorney General, in his motion for a rehearing, stated:



"Second. If this honorable court should hold that oil and gas leases are not taxable as such in the names of the lessees, except in the instances where such leases are owned by corporations and enter into and form a part of the estimate of the value of the capital stock, surplus and undivided profits of such corporations, the State asks that it be decided by this court whether such leases for the purposes aforesaid shall be assessed in the counties, townships and school districts where the property covered by such leases is situated, or at the principal place of business of such corporations" (Record, p. 240).

Of course the plaintiff in error made a motion for rehearing. Both motions were denied. The Attorney General received no elucidation from the court. The judgment stands against this particular oil and gas company.

This decision is without other bearing in the jurisprudence of the State of Oklahoma than as record evidence of a liability against the plaintiff in error. It lays down no new rule which could be followed by the office of the Attorney General in subjecting other corporations to like burdens, and apparently suggested no rule for the guidance of the legislature of the State.

We find that the case was practically disregarded as a rule of action by State officers and the legislature. Therefore in attempting to reach the same kind of property rights as are comprehended in oil and gas mining leases, the legislature passed the act of March 11, 1915 (Session Laws 1915, p. 18). This act was passed after the decision of the Supreme Court of the United States in the *Harrison* case, and expressly omits from the purview of the act all *instrumentalities or agencies that might be legally classed as Federal agents charged with a Federal duty*.

### PART THIRD OF ARGUMENT.

The plaintiff in error was denied the equal protection of the laws of the State of Oklahoma as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

This question is raised by the fourth, sixth, seventh, and eighth assignments of error.

That a corporation is a person, within the meaning of the Fourteenth Amendment, is no longer open to discussion. The equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special object for discrimination and hostile legislation.

*Pembina Milling Co. v. Penn.*, 125 U. S., 181.

*Southern R. Co. v. Green*, 216 U. S., 400.

The provisions of the Fourteenth Amendment relate to and cover all the instrumentalities by which the State acts, so that the conduct of legislative, judicial, and executive officers of the State are subject to analysis in determining whether this right has been violated.

The judicial act of the highest court of the State, in authoritatively construing and enforcing its laws, is the act of the State.

*Twining v. New Jersey*, 211 U. S., 78.

*Chicago R. Co. v. Chicago*, 166 U. S., 226.

By stipulation in this case the evidence or statement of Mr. Brennan was allowed to be presented before the Referee, as follows:

"The proposition to assess the Indian Territory Illuminating Oil Company on its intangible assets, or lease, aside from its physical properties as an asset which should have been assessed anyway, and upon which taxes should be paid regardless of the

public-service nature of the business—was a new question in the case as far as he was concerned, and thereupon the witness stated that the Indian Territory Illuminating Oil Company paid all its taxes on its physical properties and its gross-production tax the same as any other oil company in the oil and gas fields in Oklahoma, and that the witness did not desire the referee to understand that said company was neglecting to pay taxes to any less extent than any other oil company and that the manner adopted and pursued by the Indian Territory Illuminating Oil Company in returning its property for assessment locally, viz., on its physical properties only and by paying the gross-production tax was customary throughout the oil and gas bearing fields—that some of the sublessee companies in the Osage were worth more than the Indian Territory Illuminating Oil Company, and that all said companies would escape the particular burden imposed in this case, if such rule were followed as to this company. That the witness was familiar with the manner of the assessment of oil companies in Osage, Washington, and Tulsa counties particularly, and that he was interested as counsel in the tax ferret cases pending which involve this very question” (Record, p. 206).

The testimony showed without contradiction that some of the sublessee oil companies under the Indian Territory Illuminating Oil Company enjoyed larger revenues and profits in the Osage Reservation than did the plaintiff in error. The companies were actually named in the evidence and one was valued at \$7,000,000 and mentioned as not paying one-third of the taxes assessed against the plaintiff in error, if the rule in this particular case was allowed to stand as an exception. The Standard Oil Company, the Prairie Oil & Gas Company and the Barnsdall Oil Company were mentioned (Record, p. 92). The peculiar manner by and through which the plaintiff in error was dragged before the State Board of Equalization as a public-service corporation, when its gas business was only subsidiary to its oil business, and when, as a part of the same proceedings, the State

board of assessors attempted to assess against the company the value of all its oil and gas leases in the Osage Reservation, was a proceeding by and through which the plaintiff in error would be subjected to an assessment and valuation on intangible properties different from any other oil and gas company in the State of Oklahoma.

Therefore there was duly filed the sixth, seventh, and eighth assignments of error. The sixth assignment charged error by the court in holding and deciding that the action of the State board of assessors, in imposing a tax burden upon the plaintiff in error, which was not imposed upon other corporations in like position, was valid, and that it did not deprive the plaintiff in error of the equal protection of the laws.

The seventh assignment of error is based upon the discrimination against the plaintiff in error by the court in upholding an alleged assessment against the capital stock of said Company when the capital stock of no other Company was subjected to such assessment.

The eighth assignment of error is based upon the action of the court itself in denying to plaintiff in error the equal protection of the laws for the reason that its oil and gas leases or the revenue, profits and income therefrom are held subject to taxation by the Supreme Court of Oklahoma, while all other companies and individuals owning like leases are exempted therefrom (Record, p. 5).

Assessing the franchises and other property of certain corporations at a different rate and by a different method from that employed for other corporations of the same class, for the same year, which results in enormous disparity and discrimination, denies the equal protection of the law guaranteed by the Constitution of the United States, Amendment Fourteen.

*Chicago Union Traction Co. v. State Board of Equalization* (C. C., 1902), 114 F., 557.

*Chicago Consol. Trac. Co. v. Same, Id.*

*Raymond v. Chicago Union Tract. Co.*, 207 U. S., 42.

*Raymond v. Chicago Edison Co.*, 207 U. S., 42.

In the petition to the Supreme Court of the State of Oklahoma, on which is based the appeal from the State Board of Equalization, this proposition that the plaintiff in error was denied the equal protection of the laws by such proceeding was particularly set forth in subdivision #3 of said petition (Record, p. 11).

#### **PART FOUR OF ARGUMENT.**

**The action of the State court deprives the Indian Territory Illuminating Oil Company of its property without due process of law.**

This question is raised by the third assignment of error, as follows:

"Third. The Supreme Court of the State of Oklahoma erred in holding and deciding that the action of the State board of assessors in assessing the lease, rights, and privileges granted to the Indian Territory Illuminating Oil Company by the Osage tribe of Indians, and renewed by act of Congress, was not in violation of section 1 of article 14 of the Constitution of the United States as depriving it of its property without due process of law" (Record, p. 5).

In support of this proposition, the argument with reference to the fourth, sixth, seventh, and eighth assignments of error, embraced in the last preceding subdivision of this brief, are resubmitted. The authorities there cited seem to us equally applicable here and to support also this assignment. We cannot believe that any proceedings so discriminatory in their application and unequal in their results can be regarded as according due process within the meaning of the Constitution.

## CONCLUSION.

It has been well held by the Supreme Court of the State of Oklahoma in numerous cases that oil and gas leases are mere grants of a right to enter upon lands to prospect for oil and gas, no title vesting until such substances are reduced to possession by extracting the same from the earth—an incorporeal hereditament. The lease extension granted to the plaintiff in error by act of Congress over 680,000 acres of land in an Indian reservation gave to the plaintiff in error precisely the same character of right and title as expressed and defined in those decisions. No person or corporation had any right to enter upon said Reservation unless permitted to do so, directly or indirectly, by act of Congress. The plaintiff in error was granted an extraordinary privilege, license, franchise, or right, and was under serious obligations to the Government of the United States as administrator for the Osage Indian tribe. It appears that the activities of the company under such charter were of a pioneer character, covering extensive areas of undeveloped territory, and that the monetary interest of the tribe depended upon the manner in which the activities were carried on and the extent to which production and development were secured. The evidence is clear that the company possessed \$106,665.12 of physical properties at an admittedly fair valuation as a going concern; that it has secured oil in remunerative quantities from said lease, and that the gas discovered was utilized in operating for oil at a net loss as far as the gas was concerned. It appears that nearly \$400,000 of the total valuation of the properties of the Company, tangible and intangible, were represented by this oil and gas lease obtained from the Government, and the development and production obtained thereunder from which the royalties, income, and dividends were obtained. When the Supreme Court of the State of Oklahoma finally decided, in its second

opinion, that oil and gas mining leases in said State, no matter where located, were not subject to assessment and taxation, under the statutes of the State, it would have been far better, far more simple, far more logical, and far more consonant with equity and justice if the State court had also concluded in very simple language that the net result of its determination, in reversing its former opinion, was to find that oil and gas leases, and production and profits therefrom, in the Osage Reservation were not subject to taxation and, therefore, reverse the conclusion of its Referee and the determination of the State Board of Equalization.

In such event this case, as it now appears among the decisions of the Supreme Court of the State of Oklahoma, would not stand as it does—a judgment against a single company, but affording no rule by which any other company can be similarly held.

It is therefore urged upon this honorable court that the decision and judgment complained of is wrong, and ought to be reversed. We ask that it be so ordered.

Respectfully submitted,

JOHN H. BRENNAN,  
PRESTON C. WEST,  
*Attorneys for Plaintiff in Error.*

(30286)



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IN THE  
**Supreme Court of the United States**

October Term, 1915.

No. 333.

INDIAN TERRITORY ILLUMINATING OIL  
COMPANY, Plaintiff in Error,

vs.  
STATE OF OKLAHOMA, Defendant in Error.

ON WRIT OF HABEAS CORPUS  
FROM THE STATE OF OKLAHOMA.

JOHN W. HANCOCK, Attorney in

IN THE  
**Supreme Court of the United States**

October Term, 1915.

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No. 283.

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INDIAN TERRITORY ILLUMINATING OIL  
COMPANY, Plaintiff in Error,

v.

STATE OF OKLAHOMA, Defendant in Error.

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***IN ERROR TO THE SUPREME COURT  
OF THE STATE OF OKLAHOMA.***

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**ANSWER BRIEF OF DEFENDANT IN  
ERROR.**

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**Statement of Case.**

By writ of error to the Supreme Court of the State of Oklahoma, this case presents for review by this court the final judgment of the Supreme Court of the State of Oklahoma, affirming the report of the referee in the matter of the assessment of the property of the Indian Territory Illuminating Oil Company for taxation for the year 1912. Said company is a corporation organized and chartered under the laws of the State of New Jersey, and as such corporation authorized to transact business in the State of Oklahoma. Pursuant to Act of Congress of February 28, 1891 (26 Stat. 794), and the Act of the Osage Coun-

cil of March 14, 1896, and by virtue of authority vested by its charter, the said company, on March 16, 1906, entered into a contract with the Osage Tribe of Indians, through James Bigheart, Principal Chief of said tribe, for a ten years' oil and gas lease on certain lands belonging to the Osage tribe, aggregating about 680,000 acres. For the year 1912 the State Board of Equalization assessed the properties of said company at five hundred thousand dollars. The company appealed from the action of said board to the Supreme Court of the State of Oklahoma. The Supreme Court appointed a referee to take testimony and report findings of fact and conclusions of law. The findings of fact and conclusions of law reported by the referee to the Supreme Court were affirmed. Upon petition and application of the company, plaintiff in error here, a rehearing was granted by the Supreme Court of Oklahoma modifying some phases of the original opinion, but affirming the report of the referee and holding the assessment of the properties of said company at five hundred thousand dollars to be valid under the law and sustained by the testimony taken by the referee, the essential difference between the original opinion and the opinion on rehearing being that in the original opinion it was held that oil and gas leases, as such, constitute property as defined by the Constitution and Statutes of the State of Oklahoma, and as such was subject to taxation by said State, while the opinion on rehearing held that oil and gas leases, as such, were not defined as personal property subject to taxation under the Statutes of Oklahoma, and, therefore, could not be taxed as such, but that under the statutes the value of the capital stock of said company could be taken into consideration by the State Board of Equalization in assessing the properties of said company and that the evidence taken before the referee was sufficient to sustain the assessment made by the State Board of Equalization, and

from the judgment of the Supreme Court of the State of Oklahoma in said opinion on rehearing the plaintiff in error brings the case here on writ of error.

### **Statement of Issues.**

Eight separate assignments of error are presented by the plaintiff in error, but these are grouped and presented under four separate heads, to-wit: First, "The whole assessment is void because of the inclusion therein of the business, franchises, grants, and leases belonging to plaintiff in error and granted by Act of Congress in a matter within its exclusive jurisdiction"; Second, That plaintiff in error was a Federal agent under the said oil and gas lease contract, and that its properties could not be legally taxed without imposing a burden upon a Federal agency; Third, "The plaintiff in error was denied the equal protection of the laws of the State of Oklahoma as granted to it by the Fourteenth Amendment to the Constitution of the United States"; Fourth, "The action of the State Court deprives the Indian Territory Illuminating Oil Company of its property without due process of law."

### **Argument.**

We will discuss these four propositions in the order presented. It is contended by plaintiff in error under the first proposition presented that the whole assessment is void because it included franchises, grants, and leases granted to plaintiff in error by an Act of Congress. In the first place, this contention is wholly unwarranted and unsupported because no Act of Congress ever specifically granted to plaintiff in error any franchises, rights, or privileges, but the Act of Congress which plaintiff in error doubtless has in mind and upon which it relies, namely, the Act of February 28, 1891 (26 Stat., 794), merely authorized the leasing of certain of the Osage

lands by the authority of the Osage Indian Council, the Act in question being as follows: " Provided that where lands are occupied by Indians who have bought and paid for the same and which lands are not needed for farming or agricultural purposes and are not desired for individual allotments, the same may be leased by authority of the Council speaking for such Indians for a period not to exceed five years for grazing or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior." This statute is not a grant of any authority, franchise, or privilege to any particular person or corporation, and is merely a permit to the Osage Tribe, authorizing such tribe to lease to any person or any number of persons upon the approval of such lease contract by the Secretary of the Interior.

In the second place, if it were a fact, which we do not concede, that certain non-taxable franchise were included in the assessment complained of, that of itself would not invalidate the entire assessment unless such non-taxable franchise or privilege constitute the sole element of value upon which the assessment was based. The record discloses the fact that included within this assessment were something over \$106,000 of tangible assets, plainly subject to taxation. Plaintiff in error does not question the right of the State to tax its tangible properties if same had been assessed without including the franchises complained of by plaintiff in error. Hence, if it be true that non-taxable franchises were included, this of itself should not invalidate the entire assessment but would merely require this court to so modify the final judgment of the Supreme Court of Oklahoma as to eliminate the non-taxable franchises and permit the assessment to stand as

to the tangible assets which plaintiff in error does not contend the State had no right to tax.

*Second* : Under part second of the plaintiff in error's argument, it is contended that plaintiff in error as lessee of the Osage Indian lands was an agent of the Federal Government, whose functions were to develop and enhance the value of tribal lands, and that in developing such lands the plaintiff in error was merely acting as a Federal agent in carrying out the policies and performing the functions of the Federal Government. With this contention we can not agree. In fact its utter unsoundness is apparent on its very face, for if it were true that plaintiff in error did occupy the relation of agent of and for the Federal Government, then we would find this strange condition that for a stipulated consideration to plaintiff in error the Government had contracted with its own agent for and on behalf of its wards, the Osage Indians, and that plaintiff in error would occupy the dual relation of acting for its principal and for itself in the same transaction. This is contrary to the very fundamental philosophy of law and in direct opposition to the elementary rules which govern the actions and define the relations between principal and agent. The facts are that plaintiff in error occupies the position of an independent contractor, acting for itself and in its own behalf, in a contract with the Osage Indian Tribe. The contract, in fact, was not made by the Government or between the Government and the plaintiff in error. The Government is not a party to the contract, but, under the terms of the contract, page 167 of the record, James Bigheart, as Principal Chief of the Osage Tribe, acting for and on behalf of said tribe, is party of the first part, and Edwin B. Foster, acting for himself and on his own behalf, is party of the second part. The moving consideration in the contract is that a certain per cent of the oil obtained

should be paid to the Osage Tribe as a royalty or as rental, and that a certain stipulated price per year for each gas well should be paid to such tribe and that all the remaining profits should belong to and become the property of the said Edwin B. Foster, whose rights were subsequently transferred to plaintiff in error here. The Government had no right and claimed no right to any portion or percentage of plaintiff in error's share of the products. Hence, we insist that the relation of principal and agent did not exist and that the contention of plaintiff in error is without merit.

*Third:* The third contention of plaintiff in error is that it was denied the equal protection of law, guaranteed by the fourteenth amendment to the Constitution of the United States. This contention is based upon the assumption that certain privileges, franchises, and rights were included in the assessment made against plaintiff in error by the State Board of Equalization and not included in the assessments made by such Board against other companies and corporations engaged in the same character of business. This contention is not borne out by the record. The record does not disclose what elements of value were included within the assessments made by the Board of Equalization or considered by such Board in assessing the property of other like corporations. We deem it unnecessary, therefore, to notice further this contention.

*Fourth:* Under the fourth proposition presented by plaintiff in error, it is claimed that the taxing of plaintiff's properties in the manner complained of was taking its property without due process of law. This contention, as we view it, is also without merit. Due process of law has been defined by this court as follows: "The essential elements of due process of law are notice and an opportunity to be heard and to defend in an orderly



proceeding adapted to the nature of the case." *Simon v. Craft*, 182 U. S. 427; *Twining v. New Jersey*, 211 U. S. 78; *Jacob v. Roberts*, 223 U. S. 261; *Standard Oil Co. v. Missouri*, 224 U. S. 270; also the celebrated case of *Dartmouth College v. Woodward*, 4 U. S. (L. Ed.), 627.

### Conclusion.

In conclusion, we respectfully submit that none of the contentions of plaintiff in error are sustained either by the law or by the facts disclosed by the record, and that the final judgment of the Supreme Court of the State of Oklahoma is fully sustained by both, and that such judgment should be affirmed by this court.

All of which is very respectfully submitted.

S. P. FREELING, Attorney-General,  
JNO. B. HARRISON, Assistant Attorney-General,  
J. H. MILEY, Assistant Attorney-General,  
of the State of Oklahoma,  
*For Defendant in Error.*

19

Office Supreme Court, U. S.

FILED

MAR 20 1916

JAMES D. MAHER

CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1915

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**No. 283**

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INDIAN TERRITORY ILLUMINATING OIL COMPANY,  
*Plaintiff in Error,*

v.

STATE OF OKLAHOMA, *Defendant in Error.*

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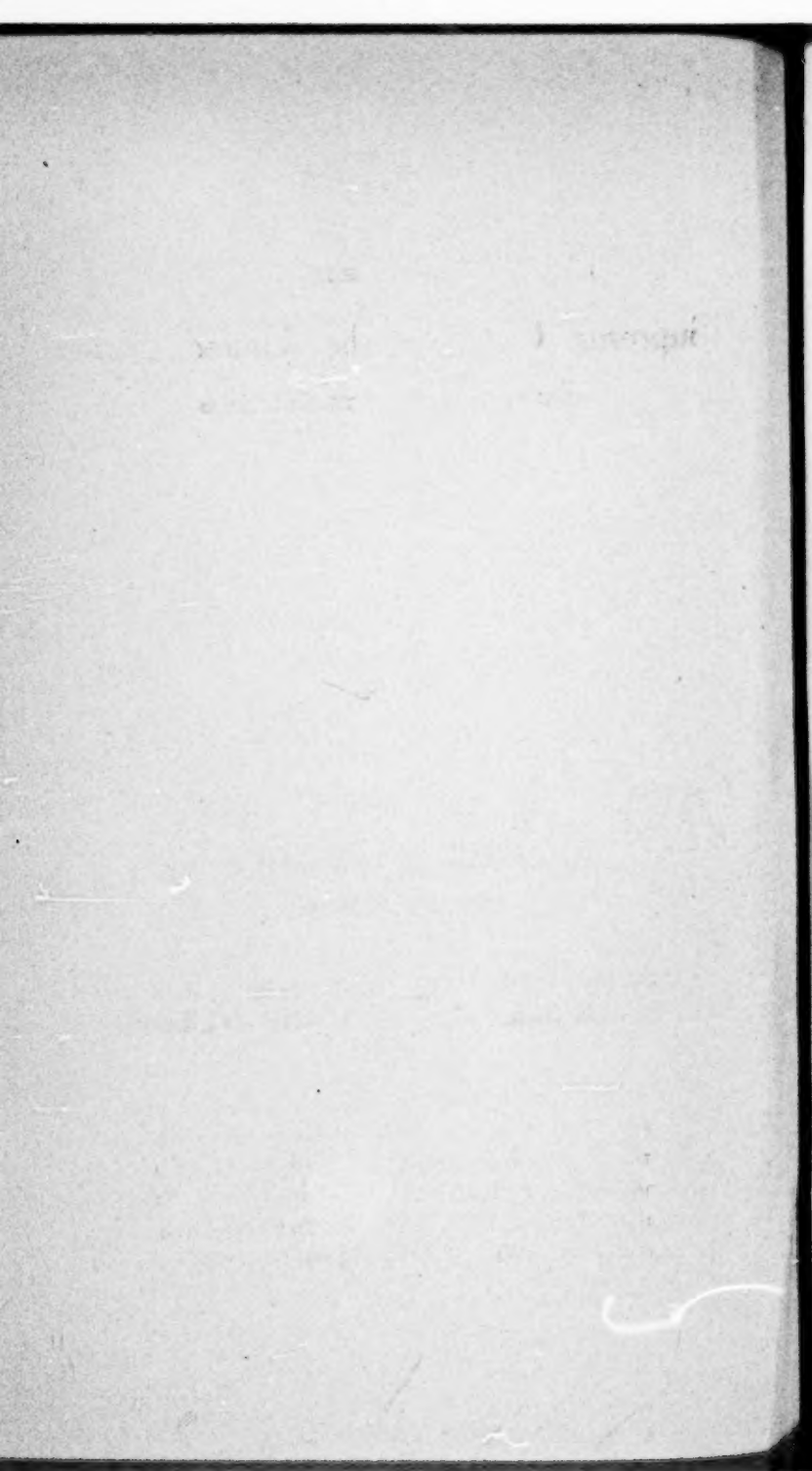
**IN ERROR TO THE SUPREME COURT OF THE  
STATE OF OKLAHOMA**

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**ANSWER BRIEF OF DEFENDANT IN ERROR**

---

S. P. FREELING, *Attorney-General,*  
JNO. B. HARRISON, *Assistant Attorney-General,*  
J. H. MILEY, *Assistant Attorney-General,*  
*For Defendant in Error.*



IN THE  
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IN ERROR TO THE SUPREME COURT OF THE  
STATE OF OKLAHOMA.

---

ANSWER BRIEF OF DEFENDANT IN ERROR.

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By writ of error to the Supreme Court of the State of Oklahoma, this case presents for review by this Court the final judgment of the Supreme Court of the State of Oklahoma, affirming the report of the referee in the matter of the assessment of the property of the Indian Territory Il-

luminating Oil Company for taxation for the year 1912. Said company is a corporation organized and chartered under the laws of the State of New Jersey, and as such corporation authorized to transact business in the State of Oklahoma. Pursuant to Act of Congress of February 28, 1891 (26 Stat. 794), and the Act of the Osage Indian Council of March 14, 1896, and by virtue of authority vested by its charter, the said company, on March 16, 1906, entered into a contract with the Osage Tribe of Indians, through James Bigheart, Principal Chief of said tribe, for a ten years' oil and gas lease on certain lands of said tribe, aggregating about 680,000 acres. For the year 1912 the State Board of Equalization assessed the properties of said company at five hundred thousand dollars. The company appealed from the action of said board to the Supreme Court of the State of Oklahoma. The Supreme Court of said State appointed a referee, as provided by a law of said State, to take testimony and report findings of fact and conclusions of law. The findings of fact and conclusions of law reported by the referee to the Supreme Court were affirmed by an opinion of said Court, \_\_\_\_\_Okla. \_\_\_\_\_ Pac. \_\_\_\_\_. Upon petition and application of the company, plaintiff in error here, a rehearing was granted by said Court, and subsequently an opinion rendered by said Court modifying some phases of the original opinion, but affirming the report of the referee and holding the assessment of the properties of said company at five hundred thousand dollars to be valid under the law and sustained by the testimony taken by the referee, the essential difference between the original opinion and the opinion on rehearing being that in the original opinion it was held that oil and gas leases, as such, constitute property as defined by the Constitution and Statutes of the State of Oklahoma, and as such was subject to taxation by said State, while the opinion on rehearing held that

oil and gas leases, as such, were not defined as personal property subject to taxation under the Statutes of Oklahoma, nor by the Constitution of said State, and, therefore, could not be taxed as personal property; but that under the statutes the market value of the capital stock of said corporation could be taken into consideration by the State Board of Equalization in assessing the properties of said company and could be properly considered as an element of value in assessing said properties, and that the evidence taken before the referee as to the amount of the capital stock of said company and the market value thereof, together with its tangible assets, was sufficient to sustain the assessment made by the State Board of Equalization. From the judgment of the Supreme Court of the State of Oklahoma in said opinion on rehearing the plaintiff in error brings the case here on writ of **error**.

### **STATEMENT OF ISSUES PRESENTED.**

While eight separate assignments of error are presented by the plaintiff in error, these assignments are grouped and presented under four separate heads, to-wit: First, "The whole assessment is void because of the inclusion therein of the business, franchises, grants and leases belonging to plaintiff in error and granted by Act of Congress in a matter within its exclusive jurisdiction"; Second, "That plaintiff in error was a Federal agent under the said oil and gas lease contract, and that its properties could not be taxed without imposing a burden upon a Federal agency"; Third, "The plaintiff in error was denied the equal protection of the laws of the State of Oklahoma as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States"; Fourth, "The action of the Supreme Court deprives the Indian Territory Illuminating Oil Company of its property without due process of law."

## ARGUMENT.

We will attempt to discuss these four propositions in the order presented.

First: It is contended by the plaintiff in error that the whole assessment is void because it included certain franchises, grants, and leases granted to plaintiff in error by a special Act of Congress. This contention is wholly unwarranted and unsupported either by the facts disclosed by the record or by the Act of Congress upon which plaintiff in error relies for its special grant of authority. The act in question being the Act of February 28, 1891 (26 Stat., 794) which act is as follows: "Provided that where lands are occupied by Indians who have bought and paid for the same and which lands are not needed for farming or agricultural purposes and are not desired for individual allotments, the same may be leased by authority of the Council speaking for such Indians for a period not to exceed five years for grazing or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior." It will be observed that this act is a general grant of authority, not to plaintiff in error, or to any other particular individual, but a statute authorizing the Osage Tribe of Indians, acting for itself through a specific act of such tribe of Indians, to lease certain of its grazing lands for a term of 5 years, and certain of its mining lands for a period of ten years, upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior. The act in question was not intended to be a grant of authority to plaintiff in error, or to other persons, authorizing them to lease such Indian lands, but was a specific authorization to such tribe of Indians, authorizing them to contract with whom they pleased for



the leasing of their lands upon such terms and conditions as the agent in charge of such reservation might recommend, subject to the approval of the Secretary of the Interior. Upon the authority of said Act of Congress, the Osage Indians in Council Assembled passed the following act, to-wit:

"WHEREAS, it is known that other Indian Nations have for many years and do now receive a very considerable revenue from the development of substances of commercial value found on their reservations, and

"WHEREAS, it is believed by the Osage people that the reservation held by them in common is rich in similar commodities, which it is their desire to develop, and

"WHEREAS, one Edwin B. Foster, of New York City, N. Y., has made application to the Osage National Council for the privilege of prospecting and boring for Petroleum and Natural Gas upon the Osage Reservation, and proposes to enter into a contract for that purpose upon terms that will not be detrimental to the agricultural interests of the country and which would increase the revenue and enhance the value of our common property should such prospecting result in the discovery of the said Petroleum or Natural Gas, now therefore,

"Be it enacted by the Osage National Council assembled at their Council House at Pawhuska, Oklahoma, this 14th day of March, 1896, that James Bigheart, principal Chief of the Osage Nation, be and he is hereby authorized to enter into a contract with the said Edwin B. Foster for the development of Petroleum and Natural Gas, only, upon the Osage reservation, and he is hereby instructed to make the said contract on the form prescribed by the Interior Department to meet the requirements of law governing such leases, for a term of ten years, with the privilege of renewal for a term of ten years more at the

expiration thereof, if the results of said lease prove satisfactory and upon the approval of the Agent in charge, subject to the approval of the Commissioner of Indian Affairs and the Secretary of the Interior.

THOMAS MOZIER,	SAUCY CHIEF,	his
Nat. Secretary.		mark
		Pres. Council.

JOHN MOZIER,	JAMES BIGHEART.
Nat. Int.	Prin. Chief.

I certify the above a true copy of the original as passed by the O. N. Council on the date therein mentioned.

H. B. FREEMAN,  
Lt. Col. & Act'g Agent.

Upon the grant of authority to the Osage Tribe by the Act of Congress, Supra, and by the foregoing Act of the Osage Indian Council, James Bigheart, as the principal Chief of the Osage Nation acting for and on behalf of his tribe, entered into a lease contract with Edwin B. Foster, of New York, whereby approximately 680,000 acres of the lands belonging to the Osage Tribe were leased, the lease contract (Rec. p. 167) being in words and figures as follows:

### **Exact Copy of Original Lease.**

WHEREAS, It is known that other Indian Nations have for many years and do now receive a very considerable revenue from the development of substances of commercial value found on their reservations, and

WHEREAS, It is believed by the Osage people that the reservation held by them in common is rich in similar commodities, which it is their desire to develop, and

WHEREAS, One Edwin B. Foster, of New York City, N. Y., has made application to the Osage National Council for the privilege of prospecting and boring for Petroleum

and Natural Gas upon the Osage reservation, and proposes to enter into a contract for that purpose upon terms that will not be detrimental to the agricultural interests of the country and which will increase the revenue and enhance the value of our common property should such prospecting result in the discovery of the said Petroleum or Natural Gas, now, therefore,

Be it enacted by the Osage National Council assembled at their Council House at Pawhuska, Oklahoma, this 14th day of March, 1896, that James Bigheart, principal Chief of the Osage Nation, be and he is hereby authorized to enter into a contract with the said Edwin B. Faster for the development of Petroleum and Natural Gas, only, upon the Osage reservation, and he is hereby instructed to make the said contract on the form prescribed by the Interior Department to meet the requirements of law governing such leases, for a term of ten years, with the privilege of renewal for a term of ten years more at the expiration thereof, if the results of said lease prove satisfactory and upon the approval of the Agent in charge, subject to the approval of the Commissioner of Indian Affairs and the Secretary of the Interior.

THOMAS MOZIER,  
Nat. Secretary.

SAUCY CHIEF, <sup>his</sup> x  
mark  
Pres. Council.

JOHN MOZIER,  
Nat. Int.

JAMES BIGHEART,  
Prin. Chief.

I certify the above a true copy of the original as passed by the O. N. Council on the date therein mentioned.

H. B. FREEMAN,  
Lt. Col. & Act'g Agent.

## MINING LEASE.

OSAGE AGENCY, OKLAHOMA TERRITORY.

.....1896

## LEASE OF

.....

.....

FOR PROSPECTING AND MINING FOR OIL AND  
GAS UPON THE OSAGE RESERVATION,  
OKLAHOMA.

## MINING LEASE.

THIS INDENTURE OF LEASE, IN TRIPLICATE,  
Made and entered into on this 16th day of March, 1896,  
by and between JAMES BIGHEART, party of the first  
part, for and on behalf of the OSAGE TRIBE OF IN-  
DIANS, occupying and residing upon the OSAGE RES-  
ERVATION IN OKLAHOMA TERRITORY, under and  
pursuant to the action of the Council of said Tribe, speaking  
for the Tribe, duly authorizing the said James Bigheart to  
contract for the lease of the whole of said reservation, for  
the period of ten years, for mining purposes, for the pro-  
duction of PETROLEUM and NATURAL GAS only, and  
duly empowering the said James Bigheart, for and on be-  
half of said Tribe, to make and execute a lease of said res-  
ervation lands, as per resolution of the OSAGE NATION-  
AL COUNCIL, hereto attached and made a part of this  
agreement, and in accordance with the provisions of Sec-

tion 3 of the Act of Congress approved February 18, 1891, (26 Stats., 794) as amended by the Act of August 15, 1894, (28 Stats., 305) and Edwin B. Foster, party of the second part, WITNESSETH:—

That the said party of the first part, for and in consideration of the payments to be made by said party of the second part, as herein agreed and stipulated, and by authority of the Action of said National Council, and the said Acts of Congress, does by these presents lease and grant unto the said party of the second part, his heirs, executors, administrators, and assigns, the exclusive right for mining purposes as therein specified, for the period of ten years from the date of approval thereof by the Secretary of the Interior, the following described lands, to-wit: All the lands in Oklahoma Territory known as the OSAGE INDIAN RESERVATION, for the sole purpose of prospecting for and drilling wells for and mining and producing PETROLEUM and NATURAL GAS only, with the right to use so much of the surface of said lands and so much of the timber, building stone, water, wood, gas or other material found thereon as may be fairly necessary for fuel and with which to construct all dwelling houses, buildings or other improvements upon said land that may be properly needed in order to successfully conduct said prospecting and mining operations; also the right of way over and across said land to any point desired to prospect upon and to any point where drilling, boring or prospecting or operating under this lease shall be carried on; and the right of way and right to construct and operate such pipe lines or roadways as may be reasonably necessary to carry on and successfully prosecute the objects of this indenture.

And the said party of the second part, his heirs, executors, administrators, assigns and sub-lessees, for, and in consideration of the privilege of conducting the mining opera-

tions as herein provided for, upon the lands hereinbefore described, for the period of time herein stated, hereby covenant and agree to pay the National Treasurer of the Osage Nation, for the use and benefit of said Tribe of Indians, the following royalties, to-wit: One-tenth (1-10) of all crude Petroleum mined or procured from said lands as the same is delivered free in tanks at the wells or places where produced; and Fifty Dollars (\$50.00) per annum for each Gas well that may be discovered and utilized, so long as said well is used by said party; said royalty to be based upon the market value of the products produced at the place of production, and to be paid to the NATIONAL TREASURER OF THE OSAGE NATION, for the use and benefit of the Osage Tribe of Indians as aforesaid, in cash, at the office of said Treasurer. And said second party further agrees to make settlements of accounts with said Treasurer, on account of ROYALTIES as herein provided for, between the first and tenth day—both inclusive—of the months of January, April, July and October of each year during the term of this lease. And the party of the second part, his executors, administrators and assigns, covenant and agree that this indenture is made with the express proviso that if any of said rents or royalties shall remain unpaid for thirty days after the same shall have become due and payable as herein provided for, or if said second party shall use the premises for any purpose save that hereinbefore authorized and agreed upon, or shall commit waste or suffer it to be committed on said premises, or misuse or fail to take proper care of the same, or shall pay or surrender said rents and royalties to any person other than the person herein named, or his duly authorized deputy, or shall fail to exercise such reasonable diligence as good business principles and the market shall demand in prosecuting said prospecting and mining operations on the said land, and in good and work-

manlike manner, or shall fail to keep and perform any and all other agreements and covenants contained in this indenture, then, in case of any such default and if such default shall continue for thirty (30) days after written notice thereof to said lessee, his successors or assigns, then this lease shall thereupon expire at the option and election of the Osage Nation as expressed by the National Council, with the approval of the Secretary of the Interior, without other notice or demand from said party of the first part upon the party of the second part, and said party of the first part may re-enter upon said premises and repossess and recover the same to all intents and purposes as though said parties of the second part had never occupied the same, and without such re-entering and without demand for rent, said party of the first part may take possession thereof in the manner prescribed by law relating to proceedings in such cases.

And it is further mutually agreed and understood by and between the parties hereto, that the OSAGE NATION reserves all right it hath and its citizens have, to cultivate, graze, and improve, and to lease for farming, grazing and mining purposes, other than for the mining purpose herein named, all and every part of the lands contained in said reservation, subject to the limitation herein contained, and such right shall not be interfered with or disturbed by the party of the second party, his heirs, executors, administrators or assigns, except to such an extent as may be actually and absolutely necessary in prospecting for and in conducting and marketing the products herein named; and said second party and those acting under, through or by him, shall not prospect for or drill or bore any wells for the production of the substances herein mentioned within or upon any cultivated enclosure on said reservation without the written consent of the person occupying such premises, duly



acknowledged before the U. S. Indian Agent of the Osage Agency.

And it is further expressly agreed between the parties hereto, that the Osage Nation shall have the right to the free use of Gas for all Government, school and other public buildings of the Nation from any well or wells that may be discovered on said land; and this right shall also extend to all citizens of the Nation for domestic purposes; Provided that no expense shall be incurred by the party of the second part in piping Gas for such purposes. And said second party, in consideration of the covenants herein contained, further covenants and agrees not to remove from said lands any buildings or improvements erected thereon during the term of this lease; but said buildings and improvements shall become a part of the land and shall remain thereon and become the property of the Osage Nation as a part of the consideration herein provided for; Provided that all engines, derricks, tools and machinery shall remain the property of the party of the second part.

But it is also further expressly provided between the parties hereto, that in case of failure on the part of the party of the second part to pay the rents and royalties as herein specified, the Osage Nation shall have a lien upon all buildings, improvements, engines, derricks, tools and machinery erected upon or brought upon said lands by the said second party to secure the payment of rents and royalties.

And the said second party further agrees and covenants to exercise such diligence in conducting said prospecting and mining operations as shall be consistent with good business principles, and to open and operate mines and wells for the products above indicated in a good and workmanlike manner; to commit no waste upon said lands and to suffer no waste to be committed thereon; to take good care of the same and to surrender and return the premises at the expiration of this lease to the Osage Nation in as good condi-

tion as when received, ordinary wear and tear in the proper use of the same for the purposes herein indicated, and unavoidable accidents, excepted. And it is further expressly agreed that if prospecting hereunder shall not be begun within six months after the approval of this lease by the Secretary of the Interior, or if one or the other of the products herein mentioned be not discovered in paying quantities within eighteen months after such approval, or in case of the failure of the party of the second part for a period of six months at any one time to conduct prospecting or mining operations hereunder, then, in either of said cases, this lease shall terminate, and the party of the second part shall have and exercise no further rights hereunder.

And it is further agreed between the parties hereto that the said second party shall keep a true and accurate record and account of said mining operations, showing the whole amount of Petroleum mined and produced hereunder and the number of Gas wells bored and the number in operation, with dates of boring and operating, and that the Osage Nation through its proper officers, the U. S. Indian Agent, of the Osage Agency, the Special Indian Agent and Indian Inspectors of the Interior Department, or such other persons as may be designated by the Commissioner of Indian Affairs, or the Secretary of the Interior, shall at all times have the right to make such reasonable examination of the books, accounts, records and papers of the party of the second part, or those claiming under him, as may be necessary to enable them to obtain all information desired as to the amount of Petroleum mined and produced hereunder and as to the number of Gas wells bored and the number that have been operated and utilized together with the dates of boring and using. And it is also further provided that the said party of the second part shall enter into a good and sufficient bond, with at least two sureties, in the sum of \$5,000, payable to the Secretary of the Interior for the use and

benefit of the Osage Nation, conditioned upon the faithful performance of the conditions of this lease, which bond shall be approved by the Secretary of the Interior. It is also provided that this lease shall become operative only after its approval by the Secretary of the Interior.

And it is further expressly provided that the said party of the second part, or those claiming under him, shall not maintain any nuisance on said reservation and shall not sell or give away, or permit their employes to sell or give away any intoxicating liquors on said reservation during the term of this lease; and that he or they will not use the premises for any other purposes than that authorized in the lease.

And it is agreed and understood between the parties hereto that the privilege of conducting mining operations hereunder is permitted and agreed to upon the express condition that if the Indian title to any portion of the lands used and occupied by the lessee, his heirs or assigns, shall be extinguished before the expiration of the time herein stated, then and in that event this lease shall be void and of no force and effect with reference to the lands to which the title shall be extinguished, from and after the date of such extinguishment; and the lessee shall be subject to removal therefrom upon sixty days' notice from the Secretary of the Interior, in his discretion; Provided that the extinguishment of the title herein mentioned shall not apply to lands which shall be allotted in severalty to the Indians, so as to effect this lease to the lands so allotted, but in case any such lands are so allotted, then the royalties accruing on the same shall be paid to the allottees, respectively, instead of to the National Treasurer of the Osage Nation.

It is further provided between the parties hereto that no member of or delegate to Congress, or officer, agent or employe of the Government shall be admitted to any share or part in this lease, or derive any benefit to arise therefrom.

IN TESTIMONY WHEREOF, the said parties of the first and second parts have hereunto set their hands and seals the day and date first above named. All erasures and interlineations having been made before signing.

Witness:

FRED MORRIS. JAMES BIGHEART, (SEAL)  
EUSTACE WHEELER. Prin. Chief.

Witnesses:

E. C. GORDON. EDWIN B. FOSTER. (SEAL)  
JAMES S. GLENN.

On this 16th day of March 1896, personally appeared before me, H. B. Freeman, Lt. Col. 5th Inf. Acting U. S. Indian Agent of the Osage Agency, the above mentioned JAMES BIGHEART..... and the above named ..... personally known to me to be the identical persons named, and acknowledged the signing and sealing of the above indenture of lease, for the purposes therein named, to be their free act and deed.

H. B. FREEMAN,

Lieut. Col. 5th. Inf., Acting U. S. Indian Agent.

#### INTERPRETER'S CERTIFICATE.

I, JOHN MOSIER, do hereby certify that I am the Official Interpreter of the Osage Nation; that I fully and truthfully interpreted and explained the foregoing lease to the Osage Nation Council, before the signing and sealing thereof, and am satisfied that they clearly and fully understood the nature of said lease and all the terms thereof before authorizing the said.... JAMES BIGHEART .. to execute the same for and on behalf of the Osage Nation; and that I witnessed the signing and sealing thereof on the part of said JAMES BIGHEART..... this 16th day of March, 1896.

JOHN MOSIER,  
Official Interpreter,  
Osage Nation.

The above lease was renewed as to 680,000 acres for a period of ten years from March 16, 1906, by the Indian Appropriation Act for the fiscal year ending June 30, 1905, approved March 3, 1905, increasing gas well royalty from \$50 to \$100 per annum and royalty on oil to be fixed by the President. The President's order of June 3, 1905, increased the royalty on oil to one-eighth. The act of March 3, 1905, was re-affirmed by "An Act for the division of the lands and funds of the Osage Indians, and for other purposes," approved June 28, 1906.

STATE OF OKLAHOMA }  
WASHINGTON COUNTY. } ss:

Chas. F. Leech, of lawful age, deposes and says that he is Manager of the Indian Territory Illuminating Oil Company, that he has compared the within instrument, and that it is a true and correct copy of a certified copy on file in his office, said copy being certified to by A. C. Tonner, Acting Commissioner of Indian Affairs, as being a true and correct copy of the original on file in his office in Washington, D. C.

CHAS. F. LEECH,

Subscribed and sworn to before me this 26th day of April, 1911.

(SEAL) C. H. CALDWELL, *Notary Public.*

My commission expires Dec. 7, 1912.

It will be observed by the terms of the foregoing lease contract and by the certificates thereto attached that it was never approved by the Secretary of the Interior, but that it is a straight lease of certain mining privileges granted by the Osage Tribe through its principal Chief, James Bigheart, to Edwin B. Foster for a stipulated consideration to be paid in rentals to the Osage Tribe by said Edwin B. Foster, the balance of all the products of such lands to be-

long to Foster himself, in which products the Government nor the Indians claimed no interest whatever, and over which products neither the Government nor the Indian Tribe exercised, or pretended to exercise, the least control. There is not a hint in either the Act of Congress authorizing the Osage Tribe to make such contract, nor in the Act of the Osage Tribe authorizing James Bigheart, its principal Chief, to make such contract, nor in the terms or conditions of the contract itself, that Edwin B. Foster was constituted a Federal agent or a Federal instrumentality for the purpose of carrying out the functions of the Federal Government toward its wards, the Osage Tribe. But if it were a fact, which we do not concede, that certain non-taxable franchises were included in the assessment complained of, that of itself would not invalidate the entire assessment unless such non-taxable franchises or privileges constituted a sole element of value upon which such assessment was based. The record discloses that the plaintiff in error, sub-lessee of Edwin B. Foster, had certain tangible assets aggregating over \$106,000 (Rec. p. 96); that it was also capitalized in the sum of \$3,500,000. (See Referee's findings of fact, Rec. pp. 77-78: pp. 8-13, inclusive, plaintiff's in error brief). Hence if it was true that certain non-taxable franchises were included within the \$500,000 assessment, this of itself would not invalidate the entire assessment, but merely justify this Court to so modify the final judgment and opinion of the Supreme Court of Oklahoma as to eliminate such franchises as the Court might find to be non-taxable, and to permit the assessment to stand as to the tangible assets and the market value of the capital stock which the State Board of Equalization had authority under the law to consider as an element of value in estimating the value of such tangible assets. That a State Board of Equalization has such authority has been held by the Supreme Court

of Illinois in *O. & M. R. R. Co. v. Webber*, 96 Ill. 443-448; *Pac. Hotel Co. v. Lien*, 83 Ill. 602; *State Board of Equalization v. People*, 191 Ill. 528, 58 L. R. A. 513; By the Supreme Court of Vermont, 13 L. R. A. 166; *People v. Coleman* (N. Y.), 12 L. R. A. 762; *Commonwealth v. Standard Oil Co.*, 101 Pa. 119; *Commonwealth v. N. Y., etc. Ry. Co.*, 188 Pa. 169; *Commonwealth v. Beck Creek R. Co.*, 188 Pa. 199; *State Board of Equalization v. Goggin*, (Ill.), 58 L. R. A. 513; Also by the Federal Court in *Western Union Tel. Co. v. Norman*, 77 Fed. 13; and by this Court in the *State R. R. Tax Cases*, 92 U. S. 575; *Ky. R. R. Tax Cases*, 115 U. S. 321; *Adams Express Co. v. Ohio Auditors*, 165 U. S. 194; and by this Court on rehearing in the same case, 41 L. Ed. 683. Also the following decisions by this Court will throw light upon the subject of what subjects of ownership constitute property and what is meant by the term 'property' in the taxing statutes of the various states.

*In Re. Tiburchio v. Parrott* (U. S.), 1 Fed., 481, 506.

*Butchers Benevolent Asso. v. Crescent City Live Stock Landing & Slaughter House Co.*, 83 U. S., 36.

*Scranton v. Wheeler*, 179 U. S., 114; 45 L. Ed., 126  
*Close v. Noye*, (N. Y.), 41 N. E., 570.

*Carter v. Hammett*, (N. Y.), 12 Barb., 253, 263.

*Pause v. City of Atlanta*, (Ga.), 26 S. E., 489.

*Fisher v. Cushman*, (U. S.), 103 Fed., 860; 43 C. C. A., 381; 51 L. R. A., 292.

*Wright v. Southern Ry. Co.*, 63 Ga., 783.

*Security Sav. Bank v. City of San Francisco*, 132 Cal., 599.

*Sav. & Loan Soc. v. City of San Francisco*, 131 Cal., 362.



- County of Santa Clara v. So. Pac. R. Co., (U. S.)  
83 Fed. 385.  
Northwestern Mutual Life Ins. Co. v. Lewis and  
Clark County, 72 Pac. 982, 28 Mont. 484.

Also the following cases from this Court will set additional light on the question of power of states to tax the property of an agent of the Federal Government, and what constitutes property within the taxing powers of a state, to-wit:

- Thomas v. Pac. Ry. Co., 9 Wall., 579.  
R. R. Co. v. Reniston, 18 Wall., 5.  
Tel. Co. v. Texas, 105 U. S. 460.  
Utah & Northern Ry. Co. v. Fisher, 116 U. S. 28.  
Western Union Tel. Co. v. Moss, 125 U. S. 531.  
Ficklin v. Shelley Cty. Taxing Dist., 145 U. S. 1.  
Reagon v. Mercantile Trust Co., 154 U. S. 413.  
Postal Tel. Co. v. Adams, 155 U. S. 688.  
M. & R. Co. v. Arizona, 156 U. S. 347.  
Cent. Pac. v. California, 162 U. S. 91 & 167.  
Thomas v. Gay, 169 U. S. 264.  
Wagoner v. Evans, 170 U. S. 588.  
Balto. Ship Building Co. v. Balto., 195 U. S. 375.  
Mont. Catholic Mission v. Missoula County, 20  
U. S. 118.

The contention made by plaintiff in error on page 30 of their brief that "The plenary power of Congress over all the lands and property of the Osage Indian Tribe will be admitted" and the authorities cited following such quotation are not in point with any issue involved in this cause. The defendant in error does not contend that Congress does not have exclusive jurisdiction over the tribal lands of the Indians, nor does it claim the right to tax or in any manner restrict the free exercise of the Federal Government over such tribal properties; but in the case at bar the State has

not sought to impose a tax upon any of the properties of the Osage Tribe, but merely seeks to tax the properties of plaintiff in error, in which neither the Government nor such Tribe claims any interest, and over which neither claims or attempts to exercise any control. The State merely claims the right to tax such properties of plaintiff in error as the said State would be required under its laws to protect, and we, therefore, respectfully submit that these leases do not constitute Federal agencies or Federal instrumentalities as they have been defined by this Court in the authorities above cited, and that the taxing of investments, property interest and elements of value which plaintiff in error own in these leases, and which elements of value belong exclusively to plaintiff in error, are plainly taxable as elements of value which must be and are protected by the laws of the State of Oklahoma. It is the primary contention of the State that such values and such ownership of property interests belonging to plaintiff in error as must be protected at the expense of the State government should bear its portion of taxation for the protection it receives from the State, and the contention made by plaintiff in error that any tax upon their properties would to that extent constitute a restriction upon the operation of Federal instrumentalities is wholly without merit. The right of the State to tax or in anywise to impair or restrict the exercise of the privileges and franchises granted by the leases in question is not insisted upon. To impose an occupation or privilege tax upon this company before it could be authorized to exercise the privileges granted under the lease might properly be a restriction upon the operation of a Federal agency; but the taxing of properties which fall to plaintiff in error and in which and to which plaintiff in error owns the exclusive title, and exercises exclusive and absolute control, the State does insist that it has the right to tax. As to whether the properties of plaintiff in error have been overtaxed

does not appear from the record. In the former opinion the Supreme Court of Oklahoma held that the elements of value vested in these leases constituted property which should be taken into consideration in affixing the assessable value of its taxable interest. The latter opinion, while holding that the oil and gas leases, as such, were not made subject to taxation as personal property under the Oklahoma Statutes, did hold, however, that under such statutes the market value of its capital stock could be considered in fixing the assessable value of its taxable interest. In this contention we respectfully submit that such opinion is amply supported both in the original opinion in *Adams Express Co. v. Ohio State Auditors*, 165 U. S. 194, and in the very able opinion on rehearing, 41 L. Ed. 683.

Second: In part second of plaintiff's in error argument (P. 38 of Brief) they attempt to further discuss the question of Federal agency, which we think we have fully answered. We have examined the authorities cited by plaintiff in error on page 33 of brief, and must conclude that they have no application to the real issues involved in this case. The case of *Choctaw, etc., R. R. Co. v. Harrison*, 235 U. S. 292, and the decisions cited therein and upon which the opinion is based, have no application to this case. In said case the question was whether in an agreement between the Government itself and the Indian Tribes—The Choctaw and Chickasaw Tribes—wherein a definite duty was imposed upon the Government to protect such tribes in the operation of coal mines. The lessees of such mines were instrumentalities, through which the obligation of the Government to said tribes was to be carried into effect, and that they could not be subjected to an occupation or privilege tax by the State. The tax sought to be imposed in the Harrison case was a

gross-revenue tax equal to a specified percentage of the gross receipt from the production of mines in addition to the taxes levied and collected on an ad valorem basis, and this Court did not in that case decide, or pretend to decide, that the elements of value which went to make up the investments which the lessees had in the Choctaw and Chickasaw leases were not taxable.

Third and Fourth: The contention made in part three and part four of plaintiff's in error argument that it was denied equal protection of the law and that its property was attempted to be taken without due process of law is not borne out by the record herein, hence the authorities cited by plaintiff in error have no application here, and we do not feel called upon to answer them. We think that as far as the record goes that plaintiff in error was given protection to that given to all other like companies and corporations, and that its property was not sought to be taken without due process of law, as due process of law has been defined by this Court in

Simon v. Craft, 182 U. S. 427.

Twining v. New Jersey, 211 U. S. 78.

Jacob v. Roberts, 223 U. S. 261.

Standard Oil Co. v. Missouri, 224 U. S. 270; also

Dartmouth College v. Woodward, 4 L. Ed. 627.

## CONCLUSION

In conclusion, we respectfully submit that none of the contentions of plaintiff in error are sustained either by the law or by the facts disclosed by the record, and that the final judgment of the Supreme Court of the State of Oklahoma is fully sustained by both, and that such judgment should be affirmed by this Court.

All of which is respectfully submitted.

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INDIAN TERRITORY ILLUMINATING OIL  
COMPANY *v.* STATE OF OKLAHOMA.

ERROR TO THE SUPREME COURT OF THE STATE OF  
OKLAHOMA.

No. 283. Argued March 14, 1916.—Decided April 3, 1916.

A tax upon a lease made is a tax upon the power to make the lease. Leases that cannot be taxed as an entity cannot be taxed vicariously by taxing the stock of the corporation owning them where the only value of the stock is the value of the leases.

Oil leases of land in Oklahoma made by the Osage tribe of Indians under authority of the Acts of February 28, 1891, and March 3, 1905, are under the protection of the Federal Government, and the lessee is a Federal instrumentality, and the State cannot, therefore, tax its interest in the leases either directly, or as the leases are represented by the capital stock of the corporation owning them. *Choctaw & Gulf R. R. v. Harrison*, 235 U. S. 292.

43 Oklahoma, 307, reversed.

THE facts, which involve the right of the State of Oklahoma to tax leases made by the Osage Tribe of Indians of lands in that State made under authority of acts of Congress, are stated in the opinion.

*Mr. Preston C. West*, with whom *Mr. John H. Brennan* was on the brief, for plaintiff in error.

*Mr. S. P. Freeling*, Attorney General of the State of Oklahoma, *Mr. John B. Harrison* and *Mr. J. H. Miley* for defendants in error, submitted.

MR. JUSTICE McKENNA delivered the opinion of the court.

The question in the case is whether a certain assignment of a lease and rights thereunder made by the Osage Tribe

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of Indians, which lease conferred the privilege of prospecting, drilling wells and mining and producing petroleum and natural gas upon lands in Oklahoma Territory, are subject to a tax assessed under the laws of Oklahoma as the property of plaintiff in error in its capacity of a public service corporation.<sup>1</sup>

Plaintiff in error, herein designated as the oil company, is assignee of the lease and asserts the negative of the question, contending that under the lease and the assignment of the lease it became "a Federal agent, acting under a Federal appointment and authorization, in the development of lands belonging to the Osage Tribe of Indians in the Osage Reservation, and that its business, license or permit as such cannot be taxed by the state government, although its physical properties are always subject to taxation." It rests its contention upon an act of Congress of February 28, 1891 (c. 383, 26 Stat. 794-5), and an act of Congress of March 3, 1905 (c. 1479, 33 Stat. 1048, 1061), which extended the lease to the extent of such portion of the lands as had been sub-leased, namely, 680,000 acres.

By the act of 1891 it was provided, "That where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by the authority of

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<sup>1</sup> It is provided by § 7338, Revised Laws of 1910, that "every public service corporation organized, existing or doing business in this State shall on or before the last day of February of each year return sworn lists or schedules of its taxable property as hereinafter provided, or as may be required by the state board of equalization, and such property shall be listed with reference to amount, kind and value on the first day of February of the year in which it is listed; and said property shall be subject to taxation for state, county, municipal, public school and other purposes, to the same extent as the real and personal property of private persons."

the council speaking for such Indians, for a period not to exceed five years for grazing, or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior."

The act of 1905 recognized the oil company as the owner by assignment of the lease, which assignment was approved by the Secretary of the Interior, and extended the lease for a period of ten years from March 16, 1906, with all the conditions of the original lease except that from and after that date the royalty to be paid on gas should be \$100 per annum on each gas well instead of \$50, as provided in the lease, and except that the President of the United States should determine the amount of royalty to be paid to all.

The State opposes the contentions of the oil company and asserts that the lease was "not a grant of any authority, franchise, or privilege to any particular person or corporation, and is merely a permit to the Osage Tribe, authorizing such tribe to lease to any person or any number of persons upon the approval of such lease contract by the Secretary of the Interior." It further asserts that the oil company merely occupied "the position of an independent contractor, acting for itself and in its own behalf, in a contract with the Osage Indian Tribe" and that therefore the relation of principal and agent between it and the Government did not exist.

A statement of the case is as follows: The oil company made a sworn return of what it considered the fair cash value of that part of its property engaged in the public service at \$53,835.10. The State Board of Equalization, after a hearing, increased the valuation to \$538,350.00, the basis of the order of the board being that the oil company was not protected from taxation by the lease from the Indians. Under the procedure of the State the



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oil company appealed from that order to the Supreme Court of the State.

In the latter court a referee was appointed to take testimony and report his findings of fact and conclusions of law. He duly reported the facts and from them also reported as a conclusion of law that the oil company was "liable to taxation by the State of Oklahoma for the full value of its property, tangible and intangible—that is, for the sum of \$500,000"; and that it was "not exempt from taxation upon the theory that it is a Federal agent or that it holds a franchise from the Federal Government." And he recommended that judgment be entered fixing the assessment of the oil company's property for taxation for the year 1911 at \$447,169.98, this being the difference between the total value of all the property and the amount (\$52,830.02) locally assessed.

The report was confirmed, the court adjudging that the property of the oil company be assessed as recommended by the referee.

The question in the case seems to be a simple one. It is given some complexity by the opinions of the court on the hearing and rehearing, which require some reconciliation. It appears from the findings of the referee that on March 16, 1896, the Osage Nation of Indians in Oklahoma Territory entered into a contract with one Edwin B. Foster, by the terms of which Foster had a blanket lease upon the Osage Indian reservation for the sole purpose of prospecting and drilling wells and mining and producing petroleum and natural gas only. The lease was for a term of ten years and was approved by the Secretary of the Interior. By an act passed March 3, 1905, Congress extended the lease as to 680,000 acres for ten years. The lease has therefore expired. Prior to its extension in 1905 the lease was assigned to the oil company.

The oil company has sub-let to more than one hundred persons and corporations and the operations upon most

of the lands covered by the lease have been and are conducted by sub-lessees. A small portion, the amount not appearing, is operated by the company.

By the terms of the lease as extended the sub-lessees are required to pay a royalty of  $1/6$  of the oil produced upon the property, of which  $1/24$  goes to the company and  $3/24$  to the Indians, the payments on behalf of the latter being made to the Indian Agency under and by virtue of the rules and regulations of the Department of the Interior.

The oil company has laid pipe lines upon the leased lands for conveying natural gas and it has been its practice to furnish gas to the sub-lessees for use as fuel for their drilling and pumping operations at a flat rate, the amount of which is not disclosed. The company also furnished gas during 1911 for domestic consumption to the residents of Bigheart and Avant, two small towns in which it had no franchise, in the Osage Nation adjacent to the pipe lines of the company. It also furnished gas to a local corporation in the city of Bartlesville, which company held a franchise for and was engaged in the business of selling gas to the residents of that city and also to a local distributing company at the town of Ochelata for use in the business of the latter company in selling gas to the inhabitants of that town.

By the terms of the contract with the Osage Indians the company was required to furnish gas free to the Osage citizens for use in the public institutions of the Osages under certain conditions named.

The oil company is primarily engaged in the business of oil production and its operations in the gas business are conducted as an incident to the development of the oil territory and the production of oil, and, to some extent, as a matter of accommodation to the citizens of Bigheart and Avant, and other persons residing along the company's pipe lines.

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In 1911 the company made a sworn return of \$53,835.10 as the actual cash value of that part of its property engaged in the public service by reason of the gas business transacted by the company. This valuation was raised by the Board of Equalization to \$538,350.00. Certain of the company's property was returned to local assessors and assessed at \$52,830.02. All of its property is situated in Osage and Washington counties, Oklahoma, and the total value of its stock, including all its property, tangible and intangible, on February 1, 1911, was \$500,000.

The property returned to the Board of Equalization and to the local assessors did not include the lease, sub-leases, contracts and franchises of the company, but only its physical property, it being contended by the company that such lease, sub-leases, contracts and franchises were not subject to taxation.

The total value of the company's property of every kind located in Oklahoma over and above the amount locally assessed was \$447,169.98 on February 1, 1911.

The gas business of the company has not been profitable but has been and is valuable as an adjunct to its oil operations.

Against the confirmation of the report of the referee the court said that the oil company made four contentions: (1) That it was not a public service corporation and that the Board of Equalization was without authority to assess its property. (2) That its oil and gas leases were not property used in any public service rendered by it. (3) That the leases were not subject to taxation in the hands of the lessee or his assigns. (4) That in exercising rights under the laws and by the act of Congress extending the lease the oil company was a Federal agency, or exercised a privilege or franchise granted by the Federal Government, and that the lease, therefore, was not subject to taxation.

The court held, (1) that the company was a public service corporation; (2) that the Board of Equalization

had the power to assess to the company other property than that used in connection with public service; (3) that the oil and gas lease was property and must be assessed in the name of the owner of the lease and not in the name of the lessor; and (4) that by reason of the act of Congress of 1905 the gas, oil and other minerals under the lands remained the property of the Osage Tribe, and that the power of Congress over the property could not be questioned. And, distinguishing between the property of a Federal agent and the operations of such agent, it was held "that the tax sought to be levied was not invalid because sought to be levied upon a Federal agency or upon a franchise granted by the Federal Government; or because it interferes with the power of Congress to regulate commerce between the Indian Tribes."

On rehearing the court modified or changed its view. The changes and the reasons for them are not easy to represent. In the first opinion the report of the referee was confirmed and it was adjudged "that the property of appellant [oil company] be assessed as recommended by the referee in his report." In the second opinion the report of the referee is again confirmed and the estimate of the property of the company at \$500,000 held to be sustained by the testimony taken by the referee; but the reasoning of the opinions is quite different. For a statement of the difference we may adopt for convenience that of the Attorney General of the State. He says, ". . . the essential difference between the original opinion and the opinion on rehearing being that in the original opinion it was held that oil and gas leases, as such, constitute property as defined by the Constitution and statutes of the State of Oklahoma, and as such was subject to taxation by said State, while the opinion on rehearing held that oil and gas leases, as such, were not defined as personal property subject to taxation under the statutes of Oklahoma, nor by the Constitution of said State, and, therefore, could not

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be taxed as personal property; but that under the statutes the market value of the capital stock of said corporation could be taken into consideration by the State Board of Equalization in assessing the properties of said company and could be properly considered as an element of value in assessing said properties, and that the evidence taken before the referee as to the amount of the capital stock of said company and the market value thereof, together with its tangible assets, was sufficient to sustain the assessment made by the State Board of Equalization."

It is clear that the Board of Equalization and the referee sustaining its action proceeded upon the consideration that the leases constituted taxable property and the first opinion of the court confirming the report of the referee had its basis in the same consideration. That consideration was regarded as untenable in the second opinion but the court adhered to its former conclusion, that is, that the report of the referee should be confirmed. The Board of Equalization, the referee, and the court in its first opinion, regarded the leases as taxable entities. In the second opinion it was held that they could not be so regarded under the constitution of the State, but the court gave them effective representation in the capital stock of the company and the latter then was taken as evidence that the value of the property of the oil company was \$500,000. Whether the constitution of the State permits this accommodation we are not called upon to say. We are clear it cannot be permitted to relieve from the restraints upon the power of the State to tax property under the protection of the Federal Government. That the leases have the immunity of such protection we have decided.

In *Choctaw & Gulf R. R. v. Harrison*, 235 U. S. 292, the railroad company was the lessee of certain coal mines, obligating itself to take out annually specified amounts of coal and to pay a stipulated royalty. It proceeded actively

to develop the mines, either directly or through its agent, and took therefrom large quantities of coal and fully complied with the obligations assumed. The State of Oklahoma attempted to tax the company under the law of the State requiring every person engaged in the mining or production of coal to make a report of the kind and amount produced to the actual cash value thereof, and at the same time pay to the State Treasurer a gross revenue tax in addition to the taxes levied upon an *ad valorem* basis upon such mining property, equal to 2% of the gross receipts from the total production. The law was held to be invalid as attempting to tax an instrumentality through which the United States was performing its duty to the Indians.

The application of the case to that at bar needs no assisting comment. A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them. If they cannot be taxed as entities they cannot be taxed vicariously by taxing the stock, whose only value is their value, or by taking the stock as an evidence or measure of their value, rather than by directly estimating them as the Board of Equalization and the referee did. The assessment by the board was of the leases as objects of taxation, having no immunity under Federal law. This was repeated by the referee, and he made it clear that the assessment was so constituted. There was, he reports, a local assessment by the assessors of Osage and Washington counties of \$52,830.02, and that the total value of the oil company's "property of every kind located in Oklahoma, over and above the amount locally assessed, was \$447,169.98, on February 1, 1911," and he recommended a judgment for the latter amount. And, we repeat, there is no doubt of what elements it was composed. The gas business, he reports, was not "of itself profitable" but was "valuable as an adjunct to the company's oil operations." He was explicit as to what

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the stock of the company represented, saying that "the total value of said company's stock, including all its property, tangible and intangible, on the first day of February, 1911, was \$500,000." It is manifest, therefore, when the court took the stock as evidence of the value of the property of the company the court took it as evidence of the value of the leases and thereby justified their assessment and taxation. This, for the reasons we have stated, was error.

It follows from these views that the assessment against the oil company, so far as it included the leases, whether as separate objects of taxation or as represented or valued by the stock of the company, is invalid.

*Judgment reversed and case remanded for further proceedings not inconsistent with this opinion.*